2–18–04 Wednesday
Vol. 69 No. 32 Feb. 18, 2004

Pages 7541–7678

Federal Register

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 03–062–2]

Irradiation of Sweetpotatoes From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations to provide for the use of irradiation as a treatment for sweetpotatoes to be moved interstate from Hawaii. The interim rule also provided that the sweetpotatoes have to meet certain additional requirements, including inspection and packaging requirements. The interim rule provided for the use of irradiation as an alternative to methyl bromide for the treatment of sweetpotatoes moving interstate from Hawaii.

EFFECTIVE DATE: The interim rule became effective on June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 318 prohibit or restrict the interstate movement of fruits, vegetables, and certain other articles from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to prevent the introduction and dissemination of plant pests into the continental United States.

Within part 318, ''Subpart—Sweetpotatoes'' (§§ 318.30 and 318.30a, referred to below as the regulations) quarantines Hawaii, Puerto Rico, and the U.S. Virgin Islands because of the sweetpotato scarabee (*Euscepes postfasciatus* Fairm. [Coleoptera: Curculionidae], also known as the West Indian sweetpotato weevil) and the sweetpotato stem borer (*Omphisa anastomosalis* Guen. [Lepidoptera: Crambidae], also known as the sweetpotato vine borer) and restricts the interstate movement of sweetpotatoes (*Ipomoea batatas* Poir.) from those places.

In an interim rule effective and published in the **Federal Register** on June 26, 2003 (68 FR 37931–37936, Docket No. 03–062–1), we amended the regulations governing the interstate movement of sweetpotatoes from Hawaii by providing for the use of irradiation as a treatment for sweetpotatoes to be moved interstate from Hawaii. The interim rule provided that the sweetpotatoes must be irradiated at a dose of 400 Gy (40 krad) and must also meet certain additional requirements, including inspection and packaging requirements. The interim rule provided an alternative to fumigation with methyl bromide for the treatment of Hawaiian sweetpotatoes.

Comments on the interim rule were required to be received on or before August 25, 2003. We received three comments by that date. The comments were from an entomologist, a public interest group, and an industry association. The comments are discussed below by topic.

General Comments

One commenter noted that sweetpotato growers in the mainland United States have made continuing efforts to control insect pests that affect their production of sweetpotatoes, such as wire worms, cucumber beetle, flea beetle, grubs, fusarium, pox, and nematodes. This commenter further noted that sweetpotato breeders are working to develop varieties of sweetpotato that are resistant to these pests. The commenter recommended that, rather than risk the introduction of new pests of sweetpotatoes into the mainland United States, the Hawaiian growers interested in moving their sweetpotatoes interstate contract with sweetpotato breeders to develop varieties of sweetpotato that are resistant to the pests named in the pest risk assessment (PRA) that we conducted as a basis for the interim rule.

Prior to the interim rule, sweetpotatoes from Hawaii were allowed to move interstate if they had been fumigated with methyl bromide to mitigate the risks identified in the PRA. The interim rule simply provided sweetpotato growers with an alternative treatment, irradiation, that we believe is equally effective at mitigating the same risks. Hawaiian sweetpotato growers are free to develop varieties of sweetpotato that are resistant to sweetpotato pests present in Hawaii, but the Animal and Plant Health Inspection Service (APHIS) has no authority to compel them to do so. We believe that both fumigation and irradiation effectively mitigate the risk of pest introduction associated with the interstate movement of sweetpotatoes from Hawaii. We are making no changes in response to this comment.

One commenter pointed out two spelling errors in the preamble of the interim rule and requested two other nonsubstantive clarifications to language in the preamble. Because these comments do not affect the regulatory language we established in the interim rule, we are making no changes to the interim rule in response to these comments. However, we have corrected the spelling of the previously misspelled terms and used the clarifications suggested by the commenter in the discussion of comments below.

Risk Mitigation Measures

One commenter objected to the inclusion of the ginger weevil (*Elytroteinus subtruncatus* [Coleoptera: Curculionidae]) on the list of quarantine pests associated with the interstate movement of sweetpotato from Hawaii. (The PRA that was the basis for the interim rule included the ginger weevil as a quarantine pest associated with such movement because it had been found as a hitchhiker on sweetpotato from Hawaii.) This commenter stated that the ginger weevil has not been documented as a pest of sweetpotato and that the interception data did not provide a sufficient basis for including the ginger weevil as a quarantine pest associated with the interstate movement of sweetpotato from Hawaii.

As the PRA stated, we do not have evidence that can confirm that sweetpotatoes do not serve as a host for

the ginger weevil. In any case, fumigation with methyl bromide or the alternative irradiation treatment provided by the interim rule remains necessary to neutralize the sweetpotato scarabee and the sweetpotato stem borer, whose association with the interstate movement of sweetpotatoes from Hawaii this commenter did not dispute. Therefore, we are making no changes to the alternative irradiation treatment provided for by the interim rule in response to this comment.

One commenter requested that we clarify the meaning of the term ''neutralize'' as it applies to the effects of irradiation treatment on plant pests.

A pest is considered to have been neutralized by a treatment if the treatment has prevented the pest from establishing itself in an area where it is not currently present. For irradiation treatment, neutralizing a pest generally refers to either sterilizing the pest or preventing it from achieving sexual maturity, although irradiation treatment can in some cases kill pests that may be present.

Two commenters objected to the fact that the interim rule was promulgated before specific research was completed to determine the dose necessary to neutralize the three pests that the PRA identified as targets for treatment: The ginger weevil, the sweetpotato scarabee, and the sweetpotato stem borer. One commenter pointed out that, although we based the dose of 400 Gy required by the interim rule on estimated minimum absorbed doses in the International Plant Protection Convention (IPPC) Guidelines for the Use of Irradiation as a Phytosanitary Measure (ISPM Publication No. 18), the research from which these estimated minimum absorbed doses were developed does not provide specific doses for neutralizing the ginger weevil or the sweetpotato stem borer. Both commenters requested that APHIS prohibit the treatment of sweetpotatoes moved interstate from Hawaii with irradiation until pest-specific research has been completed.

APHIS published a notice of policy titled ''The Application of Irradiation to Phytosanitary Problems'' in the **Federal Register** on May 15, 1996 (61 FR 24433–24439, Docket No. 95–088–1). In the section of that notice dealing with research protocols for determining appropriate doses and conditions for quarantine treatment, we stated that ''In some instances, efficacy [of a minimum absorbed dosage] may be inferred from the literature for related species and commodities when complete laboratory investigations are not possible.''

As we discussed in the interim rule, immediate action to allow the use of irradiation as an alternative treatment was warranted to alleviate the negative economic effects that Hawaiian growers and shippers faced as a result of our previous regulations, which identified fumigation as the only acceptable treatment for Hawaiian sweetpotatoes moved interstate. Fumigation facilities are unavailable on some islands in Hawaii on which sweetpotatoes are grown, and producers of sweetpotatoes on those islands must pay additional transportation costs for treatment before moving their sweetpotatoes interstate. Because a more accessible irradiation facility that provides the desired phytosanitary security was available to these producers, the requirement that sweetpotatoes must be fumigated to be moved interstate imposed an unnecessary economic hardship on these producers. Because we needed to take immediate action, we were not able to complete pest-specific research; therefore, in accordance with our notice of policy, we reviewed the available literature on related species and commodities to determine what dose would be effective at neutralizing the pests of concern.

The estimated minimum absorbed doses for certain responses for selected pest groups found in Appendix I of the IPPC guidelines were based on literature reviews by G.J. Hallman and the International Atomic Energy Agency's International Database on Insect Disinfestation and Sterilization (IDIDAS).[1] As discussed above, specific research has not been completed to determine the dose necessary to completely neutralize the ginger weevil, the sweetpotato scarabee, and the sweetpotato stem borer. However, the IDIDAS does cite a study indicating that a dose of 100 Gy (10 krad) is sufficient to induce 90 percent sterility in the sweetpotato scarabee.

The sweetpotato scarabee and the ginger weevil are stored product beetles classified under the order Coleoptera; the sweetpotato stem borer is a borer classified under the order Lepidoptera. The IDIDAS and the literature review by Hallman include references to studies of other pests of the order Coleoptera and other pests of the order Lepidoptera; the IPPC estimated minimum absorbed doses were derived from a general assessment of these references. The IPPC guidelines recommend a minimum absorbed dose of 50 to 400 Gy (5 to 40 krad) to sterilize actively reproducing adults of pests of the order Coleoptera and a minimum absorbed dose of 100 to 280 Gy (10 to 28 krad) to sterilize actively reproducing adults of pests of the order Lepidoptera. The dose of 400 Gy (40 krad) required by the interim rule is well above the IPPC guidelines' minimum dose range for borers of the order Lepidoptera and at the top of the minimum dose range for stored product beetles of the order Coleoptera. In our literature review, we determined that the ginger weevil, the sweetpotato scarabee, and the sweetpotato stem borer are biologically similar enough to other members of their respective orders, most of which are neutralized at doses well below 400 Gy (40 krad), that we believe that the 400 Gy (40 krad) dose required by the interim rule is a conservative minimum requirement that will be effective at neutralizing those three pests.

In addition, as we stated in the interim rule, preliminary research conducted by the USDA's Agricultural Research Service on the sweetpotato scarabee and the sweetpotato stem borer indicates that irradiating sweetpotatoes with a dose of 400 Gy (40 krad) kills all of these pests if they are present in the sweetpotatoes. According to this research, a dose of 250 to 300 Gy (25 to 30 krad) is sufficient to stop reproduction in these pests. (In the preamble of the interim rule, we incorrectly stated that the preliminary research mentioned here had found that a dose of 200 Gy [20 krad] was sufficient to stop reproduction in these pests; one commenter supplied us with the revised figure, and we have used it here.) Given this information, we continue to believe that the minimum dose of 400 Gy (40 krad) required by the interim rule is a conservative minimum requirement that will neutralize all three of the pests targeted by the treatment. We are making no changes in response to these comments.

One commenter noted that the preamble of the interim rule stated that requiring visual inspection for the gray pineapple mealybug and the Kona coffee root-knot nematode as a condition of the interstate movement of sweetpotato from Hawaii ''is consistent with the recommendations of the pest risk assessment.'' The commenter also noted that the PRA states at one point that ''Port of entry inspections appear insufficient to safeguard U.S. agriculture.'' The commenter believed that these statements were inconsistent.

The statement ''Port of entry inspections appear insufficient to safeguard U.S. agriculture'' can be found in the executive summary of the PRA; it refers to the overall pest risk presented by the interstate movement of sweetpotatoes from Hawaii before

[1] Available at *http://www-ididas.iaea.org.*

mitigations are applied and is not a characterization of any of the mitigation measures recommended in the PRA for any specific pests. The PRA found that the gray pineapple mealybug and the Kona coffee root-knot nematode have pest risk potential values of ''medium'' and ''low,'' respectively. Pests with pest risk potential values of ''low'' typically do not require specific mitigation measures, while specific phytosanitary measures may be necessary for pests with values of ''medium.'' Because the two pests in question are external pests, we believe they can be visually detected by inspectors. We are making no changes in response to this comment.

One commenter questioned the reliability of visual inspection for detecting whether the gray pineapple mealybug and the Kona coffee root-knot nematode are present on sweetpotatoes moved interstate from Hawaii.

We are confident that all inspectors have the training and skills necessary to visually detect these pests.

One commenter asked what safeguards were in place to prevent the escape of pests from Hawaiian sweetpotatoes moved interstate if the sweetpotatoes were moved to a facility within the continental United States for irradiation treatment.

The interim rule requires that sweetpotatoes moved interstate from Hawaii to a facility within the continental United States for irradiation treatment must be moved under limited permit. Any shipping containers of sweetpotatoes moved interstate from Hawaii to a facility within the continental United States for treatment must also be sealed. In addition, the sweetpotatoes must be visually inspected and found to be free of gray pineapple mealybug and the Kona coffee root-knot nematode before they are moved interstate from Hawaii for treatment. We believe these safeguards are adequate to prevent the escape of any pests that may be present prior to the irradiation of the sweetpotatoes. We are making no changes in response to this comment.

Economic Analysis

One commenter questioned the economic viability of Hawaiian sweetpotato production in the context of the interim rule. The commenter noted that the economic analysis in the interim rule gave the farm price of Hawaiian sweetpotatoes as 50 cents per cwt [2] for 2001, as reported by the Hawaiian Agricultural Statistical Service, while the farm price of sweetpotatoes in the mainland United States averaged 17 cents per cwt in 2002. In addition, production per acre of Hawaiian sweetpotatoes was far less than sweetpotato production per acre in mainland States. Given the additional costs of treatment and transportation from Hawaii to the mainland United States, the commenter asked how Hawaiian sweetpotato growers could expect to make a profit by moving their crop interstate. This question, in the commenter's view, cast doubt on the wisdom of allowing irradiation to be used as an alternative to fumigation with methyl bromide as a treatment for sweetpotatoes moved interstate from Hawaii, as the use of irradiation as an alternate treatment increased the risk of pest introduction via sweetpotatoes moved interstate from Hawaii and would not benefit Hawaiian producers of sweetpotatoes, since they would be unable to compete with mainland producers.

The sweetpotatoes grown in Hawaii and intended for interstate movement are a special purple variety, known as the Okinawan sweetpotato. Because the sweetpotatoes produced in Hawaii are a specialty product, the prevailing price for the crops of Hawaiian sweetpotato growers may be different than that of the crops of mainland sweetpotato producers. We have clarified this point in the economic analysis in this affirmation of the interim rule. However, this information does not affect our conclusion that irradiation is an effective alternative treatment to fumigation with methyl bromide for sweetpotatoes moved interstate from Hawaii.

Two commenters expressed concern that allowing irradiation as an alternative to fumigation with methyl bromide for treatment of sweetpotatoes moving interstate from Hawaii might result in significant economic effects for producers of sweetpotatoes in the mainland United States. One stated that the opening of the market for sweetpotatoes in the mainland United States for sweetpotatoes from Hawaii would probably result in increased production in Hawaii, and that the increased production would compete directly with the sweetpotatoes produced in the mainland United States; thus, even though current production of Hawaiian sweetpotatoes would not have a significant impact on a substantial number of small entities, the commenter asserted that such an impact was possible in the future. The other commenter, in reference to our statement that ''even if the irradiation treatment leads to increased production of sweetpotatoes, sweetpotato shipments from Hawaii are unlikely to affect mainland producers negatively,'' asked how we had determined this, and further asked why we had not determined the elasticity of demand for sweetpotatoes before issuing the interim rule. The commenter also asserted that any amount of additional competition in the mainland market for sweetpotatoes is likely to have significant negative economic effects on mainland sweetpotato growers.

In the economic analysis in the interim rule, we stated that any increases in the volume of sweetpotatoes moved interstate from Hawaii due to the addition of irradiation as an alternative treatment would not significantly affect mainland sweetpotato producers because Hawaiian sweetpotato production is extremely small compared to total U.S. sweetpotato production. Hawaiian sweetpotato production in 2001, the last year for which State data are available, was 1.8 million pounds; total U.S. sweetpotato production in 2003 is estimated by the U.S. Department of Agriculture's Economic Research Service (ERS) to be 1.36 billion pounds. Producers have started new plantings of Hawaiian sweetpotatoes since the interim rule became effective and the irradiation treatment became available; however, even with these plantings, Hawaiian sweetpotato production will still be extremely small as a percentage of total U.S. sweetpotato production. In addition, as noted above, Hawaiian sweetpotatoes are intended for niche markets due to their special purple color. Thus, as long as sweetpotatoes moved interstate from Hawaii are treated in accordance with the regulations, there is no apparent reason for APHIS to expect these shipments to affect mainland producers negatively. Based on this evidence, we believe an extensive analysis of U.S. demand for sweetpotatoes is unnecessary.

Regarding the comment that the interim rule opened the mainland U.S. sweetpotato market to Hawaiian sweetpotatoes, we would like to emphasize that Hawaiian sweetpotatoes had previously been allowed to move interstate after fumigation with methyl bromide. The interim rule simply provided that irradiation could be used as an alternative to fumigation.

In the economic analysis in the interim rule, we cited statistics indicating that domestic sweetpotato production grew 15 percent between 1989–1991 and 1999–2001. Two commenters stated that this statistic could be misleading. One pointed out that per capita potato consumption has

[2] ''cwt'' is an abbreviation for ''hundredweight,'' a commonly used unit of production for sweetpotatoes. One hundredweight equals 100 pounds.

remained flat since 1989–1991 at 4.1 pounds per person, according to ERS. The other asserted that sweetpotato production has become essentially cyclical in the last 30 years, as rising prices lead to increased production, which leads to falling prices, which lead in turn to less production.

The statistics we cited in the interim rule referred to production, and not to consumption; they were cited to provide background on U.S. sweetpotato production. We stated in the economic analysis in the interim rule that sweetpotato production had peaked in 1932 and then demonstrated a long-term downward trend. However, analysis of the time series data shows that—though the long-term trend has been declining, and production fluctuated from year to year—an increasing trend in sweetpotato production has prevailed since 1989.

Responding to the statement in the interim rule's economic analysis that the total volume of sweetpotatoes moved interstate from Hawaii was not likely to exceed 100 containers due to production limitations, one commenter asked us to express that amount in pounds.

A typical shipping container used to transport Hawaiian sweetpotatoes can hold about 24,000 pounds of sweetpotatoes, so the total volume of sweetpotatoes moved interstate from Hawaii each year would not be likely to exceed 2.4 million pounds, even if Hawaii were to produce its maximum possible volume of sweetpotatoes. As noted earlier, current yearly Hawaiian sweetpotato production is 1.8 million pounds.

Approximately 30,000 to 40,000 pounds of sweetpotatoes are now moved interstate from Hawaii to the mainland United States per week, although these shipments have occurred during the low season and industry representatives expect their volume to increase. We have added this information to the economic analysis in this affirmation of the interim rule.

One commenter asked several questions about the capacity of the irradiation facility currently operating in Hawaii to treat sweetpotatoes to be moved interstate from Hawaii.

Because this capacity will vary according to the number of individual shipments treated in the facility and the number of pallets of sweetpotatoes per shipment, we cannot provide a definite answer. Extensive data on the volume of sweetpotatoes treated at the Hawaiian facility are not yet available to us and will only be generated as the operation of the facility continues.

Regarding the two points discussed above, one commenter was confused as to whether the limitations on Hawaii's production capacity relate to the fact that if the capacity of the irradiation facility currently operating in Hawaii is not enough to treat all the sweetpotatoes producers and shippers wish to move interstate, sweetpotatoes may be shipped to mainland irradiation facilities for treatment.

These two capacities are independent. If sweetpotatoes cannot be irradiated at the irradiation facility currently operating in Hawaii, they must be irradiated on the mainland or fumigated with methyl bromide in order to be eligible to move interstate.

One commenter asked whether production of Hawaiian sweetpotatoes is seasonal.

Hawaiian sweetpotatoes are produced and moved interstate throughout the year, but there is some seasonal variation in volume, according to industry representatives; production during the high season can be about three times the production during the low season. We have added this information to the economic analysis in this affirmation of the interim rule.

One commenter noted that, under some circumstances, fumigation with methyl bromide could be less expensive than irradiation treatment for sweetpotatoes moved interstate from Hawaii. The commenter asked how we could know that Hawaiian sweetpotato producers and shippers would use irradiation treatment and what percentage of the Hawaiian sweetpotato crop we would expect to be irradiated.

The interim rule provided Hawaiian sweetpotato producers and shippers with an additional option for treating their product prior to moving it interstate; these producers and shippers are free to choose the alternative they prefer. As stated in the economic analysis, the fumigation of larger volumes of sweetpotatoes may, at some volumes, be performed at a lower per-unit cost than irradiation. However, irradiation can be performed at a more convenient location for some producers and eliminates the costs associated with transport between islands and overtime costs for APHIS monitoring of the fumigation process. It is also possible that the economic attractiveness of the irradiation option might increase in the future, since the supply of methyl bromide will diminish in the future due to the requirements of the Montreal Protocol, and the cost of fumigation is expected to increase accordingly. As discussed above, however, extensive data on the volume of sweetpotatoes treated at the Hawaiian facility are not yet available to us and will only be generated as the operation of the facility continues.

One commenter asked why Hawaii could not simply consume its own sweetpotato production, rather than moving sweetpotatoes interstate to the mainland United States.

APHIS has no authority over the movement of goods in interstate commerce except when such movement poses a plant or animal health risk. Hawaiian sweetpotato producers and shippers wish to move their sweetpotatoes interstate, and the interim rule provided an alternate treatment that gave those producers and shippers more options for interstate movement.

For one commenter, the interim rule appeared to be a deliberate attempt to benefit Hawaiian sweetpotato growers at the expense of mainland sweetpotato growers. The commenter cited in particular the statement in the economic analysis of the interim rule that providing the alternative irradiation treatment ''may lead to increased production of sweetpotatoes in Hawaii if the lower cost of treatment makes sweetpotato a more profitable crop to produce and ship.'' The commenter took from this statement an implication that Hawaiian sweetpotato was already profitable and that APHIS was seeking to make it more profitable, and was concerned that a rule designed to make one production area more profitable than others within the United States would be unfair.

APHIS establishes regulations to address animal and plant health risks. Of all the States, only sweetpotatoes grown in Hawaii, Puerto Rico, and the U.S. Virgin Islands are required to be treated prior to interstate movement. Allowing irradiation to be used as an alternative to methyl bromide for treatment of sweetpotatoes moved interstate from Hawaii was not intended to favor producers in Hawaii over producers in other States, but rather to provide Hawaiian producers with another means of complying with the interstate movement restrictions they face.

One commenter asked whether the economic benefits gained by the irradiation treatment facility currently operating in Hawaii were our motivation for allowing irradiation to be used to treat sweetpotatoes moving interstate from Hawaii.

We stated our motivation for allowing irradiation as an alternate treatment in the interim rule under the heading ''Immediate Action.'' Immediate action was warranted to alleviate the negative economic effects that Hawaiian growers and shippers faced as a result of our

previous regulations, which required fumigation as the only acceptable treatment for Hawaiian sweetpotatoes moved interstate. Fumigation facilities are unavailable on some islands in Hawaii on which sweetpotatoes are grown, and producers of sweetpotatoes on those islands must pay additional transportation costs for treatment before moving their sweetpotatoes interstate. Because a more accessible irradiation facility that provides the desired phytosanitary security was available to these producers, the requirement that sweetpotatoes must be fumigated to be moved interstate imposed an unnecessary economic hardship on these producers. The interim rule made irradiation treatment available to those producers.

One commenter supplied us with more current data on the operations of the irradiation treatment facility currently operating in Hawaii:

• We stated in the interim rule's economic analysis that the irradiation facility is used to treat bell peppers, eggplants, mangoes, papayas, pineapples (other than smooth Cayenne), Italian squash, and tomatoes. Although the regulations allow irradiation to be used as a treatment for bell peppers, eggplants, pineapples, Italian squash, and tomatoes to be moved interstate from Hawaii, the irradiation facility is currently not being used to treat these commodities. However, the facility is treating atemoya, carambola, litchi, longan, and rambutan.

• We also stated in the interim rule's economic analysis that some Hawaiian fruits and vegetables are sometimes shipped to irradiation facilities in the mainland United States for treatment. The commenter stated that all the produce for which irradiation is an approved treatment is currently treated in Hawaii before it is moved interstate.

We have updated the economic analysis accordingly.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations to provide for the use of irradiation as a treatment for sweetpotatoes to be moved interstate from Hawaii. The interim rule also provided that the sweetpotatoes have to meet certain additional requirements, including inspection and packaging requirements. The interim rule provided for the use of irradiation as an alternative to methyl bromide for the treatment of sweetpotatoes moving interstate from Hawaii.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

Economic Importance of Sweetpotatoes in Hawaii and the Mainland United States

Commercial sweetpotato production in Hawaii occurs on the islands of Hawaii, Kauai, Maui, and Oahu. There were 53 sweetpotato farms in Hawaii in 1997.[3] In 2001, the production of sweetpotatoes in Hawaii amounted to 1.8 million pounds, and the value of sales of these sweetpotatoes was $900,000 (table 1). The sweetpotatoes intended for interstate movement are of a special purple flesh variety known as the Okinawan sweetpotato. The crop is in year-round production in Hawaii.

TABLE 1.—PRODUCTION STATISTICS FOR HAWAIIAN SWEETPOTATOES (2001)

Item	Amount
Harvested acres	220
Yield per acre (1,000 pounds)	8.2
Production (1,000 pounds)	1,800
Farm price (cents per pound)	50
Value of sales (1,000 dollars)	900

Source: Hawaii Agricultural Statistics Service.

In the continental United States, sweetpotato is grown commercially in Alabama, California, Georgia, Louisiana, Mississippi, New Jersey, North Carolina, South Carolina, Texas, and Virginia.[4] North Carolina, Louisiana, Mississippi, and California account for the major proportion of production area by State (table 2). In total, the United States produced 1.36 billion pounds of sweetpotatoes from 93,500 acres in 2003 (table 3).

TABLE 2.—ACRES OF SWEETPOTATOES PLANTED IN THE UNITED STATES (2003)

State	Acres planted
North Carolina	42,000
Louisiana	18,000
Mississippi	14,000
California	10,100
Texas	3,400
Alabama	2,900
Others [1]	3,100
Total	93,500

[1] Including Hawaii.
Source: Economic Research Service, USDA.

The crop is grown on 1,770 farms, which represents a decrease of 44 percent since 1987.[5] Production of sweetpotatoes peaked in 1932 when 48 million cwt was generated, followed by a long-term downward trend in production. However, sweetpotato production trended higher again after 1988, and increased by 15 percent between 1989–1991 and 1999–2001. Farm cash receipts averaged $214 million over the period 1999–2001. Few imports of sweetpotatoes enter the continental United States, with 97 percent of the import volume moving directly from the Dominican Republic into Puerto Rico. The Hawaiian sweetpotato production of 1.8 million pounds thus comprises a fairly minor proportion of the total production of 1.36 billion pounds in the United States.

TABLE 3.—PRODUCTION AND UTILIZATION STATISTICS FOR SWEETPOTATOES IN THE UNITED STATES (2003) [1]

Item	Amount
Acres planted	93,500
Three year average yield (cwt/acre)	150
Production (million pounds)	1,355
Imports (million pounds)	17.0
Exports (million pounds)	53.0
Total utilization (million pounds) [2]	1,148.3
Per capita use (pounds)	3.9
Three year average per capita use (pounds)	4.0
Current dollars ($/cwt)	15.75
Constant 1996 dollars ($/cwt)	13.91

[1] Estimates are for the total United States, and therefore include Hawaii. Forecasted estimates are shown.
[2] Total utilization includes 103 million pounds used for seed and 67.8 million pounds accruing to feed use, shrink, and loss.

[3] Census of Agriculture, 1997, National Agricultural Statistics Service (NASS).
[4] NASS, 1999.
[5] Lucier, G. ''Sweet potatoes—getting to the root of demand.'' Economic Research Service, USDA, 2002.

Source: Economic Research Service, United States Department of Agriculture. Acres were obtained from Lucier.[6]

More than three-quarters of the annual U.S. sweetpotato crop is sold as human food, and around two-thirds of the total sales are for the fresh market. About a quarter of the sweetpotatoes sold for food are processed into frozen products, and 2 to 3 percent are chipped or dehydrated. U.S. sweetpotato utilization averaged 1.1 billion pounds during 1999–2001, accounting for almost 3.9 pounds per capita.

Treatment Costs

Costs of Methyl Bromide Fumigation

Methyl bromide fumigation is currently conducted on the Island of Oahu. The product has to be moved by barge from the port of Hilo on the Island of Hawaii to the port of Honolulu on Oahu. The charge for such transportation is between 2 to 3 cents per pound. A pallet of sweetpotatoes weighs 1,500 pounds (50 30-pound boxes), so the charge is approximately $35 per pallet for a non-chilled shipment. Trucking and handling charges to move the sweetpotatoes from the pier on Oahu to the fumigation site and, after fumigation, back to the pier or to the airport are estimated at $34 per pallet.

The per-unit cost of methyl bromide fumigation is influenced by the number of pallets treated. Costs are $610 for 1 to 6 pallets, $1,026 for 7 to 9, and $1,250 for 10 to 12. The minimum charge is $610. Per-unit cost thus decreases as more pallets are treated within these ranges. For example, the cost decreases from 40.6 cents per pound to 6.7 cents per pound if six pallets instead of only one pallet are treated at $610 (table 4).

TABLE 4.—COSTS OF METHYL BROMIDE FUMIGATION OF HAWAIIAN SWEETPOTATOES

Number of pallets	Weight (pounds)	Cost (cents per pound)
One	1,500	40.6
Two	3,000	20.3
Three	4,500	13.5
Four	6,000	10.1
Five	7,500	8.1
Six	9,000	6.7
Nine	13,500	7.6
Twelve	18,000	6.9

Source: Hawaii Department of Agriculture.

APHIS monitoring of the treatment costs $368 per treatment. This is based on a minimum of 2 hours required to set up for the fumigation, a minimum of 2 hours for necessary after-treatment labor such as certification, and 2 hours minimum travel time each way to monitor the fumigation. The total 8 hours at $46 per hour amounts to $368. Due to the time delays involved in inter-island movements of sweetpotatoes, all fumigations are conducted after 4 p.m. or on weekends, which means that APHIS treatment monitors are paid ''time-and-a-half'' wages. If the sweetpotatoes being treated belong to more than one shipper, the APHIS costs are evenly divided between the shippers, regardless of the relative quantities treated for each shipper. For example, if two shippers are involved, each would pay $184, even if one shipper's sweetpotatoes comprised more than half of the total treated. APHIS monitoring costs for fumigation do not vary with the number of sweetpotatoes treated.

Various time delays are involved in the inter-island movement of the sweetpotatoes for fumigation, meaning that this transportation is sometimes problematic. Shipments from the main island, Hawaii, generally leave Hilo on Monday, with the barge arriving at Oahu on Wednesday. These shipments are treated on Wednesday or Thursday and arrive by Friday on the mainland U.S. west coast if transported by air. The barge that leaves Hilo on Thursday arrives at Oahu on Saturday. Weekend fumigation is conducted at significantly higher costs and Sunday pickup at the pier is not allowed. Thus, shipping sweetpotatoes on the Thursday barge is generally avoided.[7]

There are also concerns regarding the future cost and availability of methyl bromide given the continuing reductions in the use of methyl bromide mandated by the Montreal Protocol, which governs the use of substances that deplete stratospheric ozone; in 2005, all uses of methyl bromide in developed countries other than quarantine and pre-shipment applications and critical or emergency uses will be prohibited. The price of methyl bromide has increased significantly as worldwide production of methyl bromide has decreased from its 1991 baseline. According to the U.S. Environmental Protection Agency, U.S. west coast end-user prices of methyl bromide have increased from $1.25 per pound to $4.50 per pound over the period 1995 to 2001. This represents an increase of 366 percent. Further price increases are deemed likely as the 2005 phase-out date approaches.

Costs of Irradiation

The cost of irradiation is estimated at 15 cents per pound.[8] Lot sizes will be as requested by shippers. Irradiation treatment generally occurs between 8 a.m. and 4 p.m. At these times, an APHIS inspector would already be onsite at the irradiation facility to monitor the treatment under the terms of the compliance agreement irradiation facilities must operate under in order to treat fruits and vegetables from Hawaii for interstate movement. Therefore, there would generally be no additional APHIS charges associated with irradiation treatment. Shippers could choose to have their sweetpotatoes treated outside of normal hours and thus incur APHIS charges for overtime labor, but such scheduling would be optional; as noted above, all fumigation treatments currently must be conducted during overtime hours.

The irradiation will occur mostly at an existing facility in Hawaii, prior to the shipment of the sweetpotatoes to the mainland United States. The X-ray irradiation facility in Hawaii commenced its commercial operation on August 1, 2000. At first, only papayas were treated. Five hundred to 1,000 boxes of papayas are treated per day, 4 times a week. The facility is currently also used to treat other Hawaiian fruits and vegetables for which irradiation is an approved treatment. At present, all of the fruits and vegetables produced in Hawaii for which irradiation is an approved treatment are irradiated in Hawaii before they are moved interstate.

The Hawaiian sweetpotatoes intended for the U.S. mainland markets are of a special purple flesh variety. The crop therefore comprises a specialty product intended for niche markets. The sweetpotatoes are in year-round production in Hawaii, but some seasonal variation in volume is expected. Out-shipment of the sweetpotatoes has been estimated at 50,000 to 60,000 pounds per week, and an estimated 30,000 to 40,000 pounds per week has been shipped since the interim rule was published. However, these weekly shipments occurred during the low season, and industry representatives expect the shipments to increase. New plantings of the crop have also commenced since the irradiation treatment became available.

Benefits of Irradiation Treatment

The approval of irradiation as an alternative treatment for sweetpotatoes moved interstate from Hawaii will

[6] Lucier, G., ibid.

[7] Source: Hawaii Department of Agriculture.

[8] Source: Hawaii Department of Agriculture.

benefit various stakeholders. At 15 cents per pound, irradiation can be conducted at a lower cost than fumigation of one to two pallets (20.3 to 40.6 cents per pound) (table 4). Though larger quantities of sweetpotatoes, which fill more pallets, can be fumigated at lower per-unit costs (6.7 to 13.5 cents per pound), irradiation eliminates the transport costs associated with fumigation for producers on the island of Hawaii. These transport costs include moving the crop from the island of Hawaii to Oahu (2 to 3 cents per pound) and trucking and handling costs of moving the crop between the harbor or airport and the fumigation site on Oahu ($34 per pallet, about 2.3 cents per pound). Irradiation also eliminates the cost of $368 per treatment attributable to APHIS monitoring of fumigation, which is currently conducted outside standard business hours, for all producers.

Growers and shippers on the main island of Hawaii will benefit from lower transportation costs, since shipment of the crop from Hawaii to Oahu for fumigation will no longer be necessary. The availability of treatment at a more convenient location will also remove various logistical complications. This will reduce the total expense and time delay in moving the product and will enable sweetpotatoes to be treated and shipped at a lower cost than is currently possible with fumigation. The importance of alternative treatments is especially highlighted in view of the mandated global reductions in the use of methyl bromide under the Montreal Protocol. Irradiation also tends to affect quality less negatively than fumigation and may extend the shelf life of the tubers.

The irradiation facility in Hawaii will benefit from having more crops available to treat. The treatment available at this facility has enabled many producers in Hawaii to move their products to the mainland, thus providing them with access to markets that were not previously available. For several years, the State of Hawaii has encouraged farmers to diversify agricultural production, given the significant decline in the production of sugarcane as a major crop. The approval of irradiation as a treatment for sweetpotatoes moved interstate from Hawaii will help to provide steady throughput for this facility. The facility currently treats seasonal crops whose volume is more variable than that of sweetpotatoes and is thus sometimes underutilized. A steady source of revenues from treatment, such as revenues from treating sweetpotatoes to be moved interstate, would help assure this facility's continued operation and availability for all the producers in Hawaii who can use it.

U.S. mainland consumers will benefit by an increased supply of sweetpotatoes, and particularly the increased availability of the specialty purple sweetpotatoes Hawaii produces. Hawaiian sweetpotato production amounts to 1.8 million pounds, which comprises a small proportion of the total production of 1.36 billion pounds in the United States (tables 1, 2 and 3).

Thus, as long as phytosanitary protection is maintained by treating sweetpotatoes from Hawaii prior to interstate movement, sweetpotato shipments from Hawaii are unlikely to affect mainland producers negatively, even if the availability of the irradiation treatment leads to further increases in the production of Hawaiian sweetpotatoes. Furthermore, the purple sweetpotatoes Hawaii produces are intended for niche markets in the mainland United States. However, to the extent that this interim rule makes moving sweetpotatoes from Hawaii interstate more convenient and less costly, the rule provides the Hawaiian sweetpotato industry with opportunities to expand the mainland markets for its specialty product.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their regulations on small entities. The Small Business Administration (SBA) has established size criteria using the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm.

The irradiation facility in Hawaii is expected to be the primary facility to treat Hawaiian sweetpotatoes before they are moved interstate. However, the sweetpotatoes may also be sent to one of the three other facilities on the mainland United States. These include facilities in Libertyville and Morton Grove in Illinois, and a facility in Whippany, New Jersey. The facility in Hawaii can be classified under NAICS category 115114, ''Postharvest Crop Activities (except Cotton Ginning).'' According to the SBA's criteria, this facility is classified as a small entity, since its annual sales are less than $6 million. A single firm owns the two facilities in Illinois and the facility in New Jersey. Its primary service is to provide irradiation treatment for the sanitation of medical devices on contract. This firm is classified under NAICS category 325612, ''Polish and Other Sanitation Good Manufacturing.'' However, since it is part of a larger corporation with 500 or more employees, that firm is not considered a small entity under the SBA's criteria.

Sweet potato farming is classified under NAICS 111219, ''Other Vegetables (except Potato) and Melon Farming.'' According to the SBA's criteria, an entity involved in crop production is considered small if it has average annual receipts of less than $750,000. Since the 53 sweetpotato farms in Hawaii accounted for sales of $900,000 in 2001, we believe it is safe to assume that all of these farms would be classified as small entities. We expect that the economic effects of this rule will be positive for those producers, to the extent that this rule makes moving sweetpotatoes from Hawaii interstate more convenient and less costly.

As discussed above, new sweetpotato plantings in Hawaii have commenced since the interim rule became effective. Nevertheless, even if sweetpotato production increases in Hawaii, the relative volume of production (1.8 million pounds) remains minimal in comparison to the volume of U.S. mainland production (1.36 billion pounds). The purple-fleshed Hawaiian sweetpotatoes furthermore are a specialty product intended for niche markets. Thus, as long as phytosanitary protection is maintained by treating sweetpotatoes from Hawaii prior to interstate movement, sweetpotato shipments from Hawaii are unlikely to affect mainland producers negatively.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 318 and that was published at 68 FR 37931–37936 on June 26, 2003.

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of February, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3428 Filed 2–17–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–32–AD; Amendment 39–13476; AD 2004–03–32]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Model PA–46–500TP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain The New Piper Aircraft, Inc. (Piper) Model PA–46–500TP airplanes. This AD requires you to replace all electronic control modules in the airplane electrical system with newly designed modules. This AD is the result of smoke in the cockpit and loss of electrical systems function. We are issuing this AD to prevent short circuit failure and electrical arcing of the electronic control modules, which could result in loss of the electrical systems components or burning of wiring insulation and cause smoke in the cockpit. This condition could lead to the inability to properly control the airplane.

DATES: This AD becomes effective on March 29, 2004.

As of March 29, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Mobley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6046; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

We have received several reports that a condition exists in some of the electrical control modules in the airplane electrical system.

FAA analysis indicates that there is inadequate clearance and inadequate electrical isolation between the load terminal and metal case. The modules load terminal is cutting through the rubber insulating grommet and contacting the module's metal case. This causes the electrical short circuit and electrical arcing.

The following electrical system components are potentially affected by this condition: engine start; strobe light; left/right taxi light; liquid crystal display (LCD) dimming; dual flasher (recognition light); left/right pitot heat; avionics dimming (Bezel buttons for radios); prop heat; left/right fuel pump; position light landing light; instrument panel light dimming; ice light; vent defog (vent blower); hi/low blower; stall heat; and dimmer switch lighting (overhead switch panel switches).

What Is the Potential Impact If FAA Took No Action?

If not corrected, short circuit failure and electrical arcing of the electronic control modules could result in loss of the electrical systems components or burning of wiring insulation and cause smoke in the cockpit. This condition could lead to the inability to properly control the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Model PA–46–500TP airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 9, 2003 (68 FR 58289). The NPRM proposed to require you to replace all electronic control modules in the airplane electrical system with newly designed modules.

Comments

Was the Public Invited To Comment?

We provided the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Revise Costs of Compliance

What Is the Commenter's Concern?

The manufacturer recommends revising the costs of compliance based on the following, updated information:

—There are 152 airplanes affected by this AD instead of 130 as stated in the proposed AD;

—Although all affected airplanes will have the parts modified under warranty, 108 of the affected airplanes will get warranty credit for the labor costs to have the parts removed, replaced, and tested after reinstallation;

—The workhours for labor are 12 instead of 22 as stated in the proposed AD.

—The total cost on U.S. operators will be $34,320 instead of $185,900 as stated in the proposed AD based on 44 affected airplanes not covered under warranty for the labor costs, which are recalculated using 12 workhours.

What Is FAA's Response to the Concern?

We agree that the new cost data provided by the manufacturer be used in the AD.

We are changing the final rule AD action accordingly.

Conclusion

What Is FAA's Final Determination on This Issue?

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 152 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $65 per hour = $780	Parts are covered under warranty by the manufacturer for all affected airplanes.	$780	$780 × 44 = $34,320.

There are 108 of the affected airplanes that are also covered under warranty for the labor costs to have the parts removed, replaced, and tested after reinstallation.

Regulatory Findings

Will This AD Impact Various Entities?

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–32–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–03–32 The New Piper Aircraft, Inc.: Amendment 39–13476; Docket No. 2003–CE–32–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on March 29, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PA–46–500TP airplanes, serial numbers 4697001 through 4697140 and 4697142 through 4697153, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of smoke in the cockpit and loss of electrical system functions. We are issuing this AD to prevent short circuit failure of the electronic control modules, which could result in loss of the electrical system components or burning of wiring insulation and cause smoke in the cockpit. This condition could lead to the inability to properly control the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Remove the following parts: (i) the pilot's circuit breaker panel assembly (part-number (P/N) 102228–002); (ii) the co-pilot's circuit breaker panel assembly (P/N 102228–006); (iii) the dimmer lighting module assembly (P/N 102226–002); (iv) the stall vane heat module assembly (P/N 102227–002); and (v) the propeller heat module assembly (P/N 102227–006).	Within the next 100 hours time-in-service (TIS) after March 29, 2004 (the effective date of this AD).	Follow the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(2) Return the circuit breaker panels and the remote modules identified in paragraph (e)(1) of this AD to the manufacturer listed in paragraph (g) of this AD for modification.	Prior to further flight after doing the actions required in paragraph (e)(1) of this AD.	Follow the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(3) Visually inspect all remaining exposed wires and equipment for evidence of heat damage and repair any damage found.	Prior to further flight after doing the actions required in paragraph (e)(1) of this AD.	Follow the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(4) Install the modified circuit breaker panel assemblies and the remote modules received from the manufacturer.	Prior to further flight after doing the actions required in paragraphs (e)(1), (e)(2), and (e)(3) of this AD.	Follow the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003.
(5) Do not install any part referenced in paragraph (e)(1) of this AD unless it has been modified per Piper Service Bulletin No. 1132, dated June 4, 2003.	As of March 29, 2004 (the effective date of this AD).	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Kenneth B. Mobley, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6046; facsimile: (770) 703–6097.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Piper Service Bulletin No. 1132, dated June 4, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; facsimile: (772) 978–6584. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on February 5, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3050 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–191–AD; Amendment 39–13475; AD 2004–03–31]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727–100C, 727–200F, and 727C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727, 727–100C, 727–200F, and 727C series airplanes, that requires repetitive open-hole high frequency eddy current inspections for cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main deck cargo door, and repair of any cracks found. This action is necessary to detect and correct such cracks, which could reach critical crack length and result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727, 727–100C, 727–200F, and 727C series airplanes was published in the **Federal Register** on November 18, 2003 (68 FR 64998). That action proposed to require repetitive open-hole high frequency eddy current inspections for cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main deck cargo door, and repair of any cracks found.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Allow Designated Engineering Representative (DER) Approval

The commenter, the manufacturer, requests that paragraph (b) of the proposed AD be revised to alternatively allow DERs to approve alternative methods of compliance (AMOC) for the actions specified in paragraph (a) of the proposed AD.

The FAA agrees. The option to allow DER approval of AMOCs was inadvertently omitted from paragraph (b) of the proposed AD. Therefore, we have revised paragraph (b) of this final rule to include that provision.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

We consider this AD to be interim action. If final action is later identified, we may consider further rulemaking then.

Cost Impact

There are approximately 195 airplanes of the affected design in the worldwide fleet. We estimate that 133 airplanes of U.S. registry will be affected by this AD. We provide the following cost estimates to comply with this AD, per inspection cycle:

Group	Work hours	Hourly labor rate	Parts	Cost per airplane
1	7	$65	$0	$455
2	8	$65	$0	$520
3	8	$65	$0	$520

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–03–31 Boeing: Amendment 39–13475. Docket 2003–NM–191–AD.

Applicability: Model 727, 727–100C, 727–200F, and 727C series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–53A0226, dated September 11, 2003.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the fuselage skin, strap (bearstrap), or doubler at the forward and aft hinge fittings for the main deck cargo door, which could reach critical crack length and result in rapid decompression of the airplane, accomplish the following:

Inspection

(a) Perform an open-hole high frequency eddy current inspection for cracks in the fuselage skin, strap (bearstrap), and doubler at the forward and aft hinge fittings for the main deck cargo door. Do the inspection at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–53A0226, dated September 11, 2003; except, where the service bulletin specifies a compliance time after the service bulletin date, this AD requires compliance within the specified compliance time after the effective date of this AD. Perform the inspection in accordance with the Accomplishment Instructions of the service bulletin.

(1) If no crack is found: Repeat the inspection within the interval listed in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) If any crack is found: Repair it before further flight in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD. Within 12 months following a repair, implement an inspection program for the repair into the 727 maintenance program in accordance with a method and compliance times approved by the Manager, Seattle ACO; or per data meeting 14 CFR 25.571 (Amendment 25–54 or later) approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

(b)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for the requirements of paragraph (a) of this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Incorporation by Reference

(c) Unless otherwise specified by this AD, the actions must be done in accordance with Boeing Alert Service Bulletin 727–53A0226, dated September 11, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(d) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 5, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3130 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–205–AD; Amendment 39–13474; AD 2004–03–30]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, and 727–100C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727, 727C, 727–100, and 727–100C series airplanes, that requires repetitive detailed and special detailed inspections for cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening; and repair of any crack found. This action is necessary to detect and correct such cracks, which could result in loss of the aft cargo door and rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be

examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727, 727C, 727–100, and 727–100C series airplanes was published in the **Federal Register** on November 18, 2003 (68 FR 64994). That action proposed to require repetitive detailed and special detailed inspections for cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening; and repair of any crack found.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change to This Final Rule

The FAA has determined that the option to alternatively allow Boeing Company Designated Engineering Representatives to approve alternative methods of compliance for the actions specified in paragraph (a) of the proposed AD was inadvertently omitted from paragraph (b) of the proposed AD. Therefore, we have revised paragraph (b) of this final rule to include that provision.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

We consider this AD to be interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. We estimate that 129 airplanes of U.S. registry will be affected by this AD. We provide the following cost estimates for the required inspections, per inspection cycle:

TABLE—COSTS

Airplanes	Work hours	Hourly labor rate	Parts	Cost per airplane
Group 1 airplanes not modified per Boeing Service Bulletin 727–53–0045	2	$65	$0	$130
Group 1 airplanes modified per Boeing Service Bulletin 727–53–0045	3	65	0	195
Group 2 airplanes	3	65	0	195

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–03–30 Boeing: Amendment 39–13474. Docket 2003–NM–205–AD.

Applicability: Model 727, 727C, 727–100, and 727–100C series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 727–53A0225, dated September 11, 2003.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks in the web, inner chord, and outer chord of the forward and aft frames of the aft cargo door opening, which could result in loss of the aft cargo door and rapid decompression of the airplane, accomplish the following:

Inspections and Corrective Action

(a) Perform a detailed inspection and a special detailed (high frequency eddy current) inspection for cracks in the web, inner chord, and outer chord of the forward

and aft frames of the aft cargo door opening. Do the inspections at the applicable initial compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–53A0225, dated September 11, 2003; except, where the service bulletin specifies a compliance time after the effective date of the service bulletin date, this AD requires compliance within the specified compliance time after the effective date of this AD. Do the inspection in accordance with the Accomplishment Instructions of the service bulletin.

(1) If no crack is found: Repeat the inspection within the interval listed in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) If any crack is found: Repair it before further flight in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD. Within 12 months following a repair, implement an inspection program for the repair into the 727 maintenance program in accordance with a method and compliance times approved by the Manager, Seattle ACO; or per data meeting 14 CFR 25.571 (Amendment 25–54 or later) approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

(b)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for the requirements of paragraph (a) of this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Incorporation by Reference

(c) Unless otherwise specified by this AD, the actions must be done in accordance with Boeing Alert Service Bulletin 727–53A0225, dated September 11, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(d) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 5, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3131 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–156–AD; Amendment 39–13478; AD 2004–03–34]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires replacing existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers. This action is necessary to prevent the latch cable assembly from disconnecting from the latch block assembly of the door mounted escape slide, which could result in an escape slide not deploying in an emergency situation. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published in the **Federal Register** on September 18, 2003 (68 FR 54684). That action proposed to require replacing the existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with the new, improved screw, nut, and washers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Generally Agree With the Proposed AD

Two commenters generally agree with this proposed AD and have no additional comments.

Extend Compliance Time

Three commenters request that the proposed compliance time for the replacement be extended from 18 months to 36 months. The commenters state that the extended compliance time would allow for the replacement to be accomplished concurrently with the modification of the escape slide compartment hinge assembly required by AD 2004–02–08, amendment 39–13443 (69 FR 4452, January 30, 2004). In addition, a compliance time of 36 months will allow operators to perform the replacement during the typical overhaul period for escape slides.

The FAA agrees with the commenters' request to extend the compliance time for the replacement. Extending the compliance time by 18 months will not adversely affect safety and will allow the replacement to be performed during regularly scheduled maintenance visits. Paragraph (a) of the AD has been revised to specify a compliance time of 36 months.

Clarify Applicability of Parts Installation Paragraph

Four commenters request that paragraph (b) of the proposed AD be revised to state specifically that the nut, part number (P/N) BACN10R10L, and screw, P/N NAS623–3–8, cannot be installed in the latch assembly. The commenters state that the intent of the proposed AD is to identify nuts, P/N BACN10R10L, and screws, P/N NAS623–3–8, that are not to be installed

on the latch assembly. These parts are used elsewhere throughout the airplane and are not exclusive to the latch assembly.

We agree with the commenters that the intent of the proposed AD is to prevent nuts, P/N BACN10R10L, and screws, P/N NAS623–3–8, from being installed on the latch assembly. We have revised paragraph (b) of the AD to limit the use of nuts, P/N BACN10R10L, and screws, P/N NAS623–3–8, on the latch block assembly. In addition, we removed the phrase ''that was removed from any airplane'' to clarify that any nut, P/N BACN10R10L, may not be installed on the latch block assembly of any airplane.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,919 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,129 airplanes of U.S. registry will be affected by this AD. The FAA estimates that it will take approximately 2 work hours for each airplane specified as Group 1 in the referenced service bulletin, and approximately 1 work hour for each airplane specified as Group 2 in the referenced service bulletin, to accomplish the required actions; the average labor rate is estimated to be $65 per work hour. Parts and materials are standard and are to be supplied by the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $130 per Group 1 airplane, and $65 per Group 2 airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–03–34 Boeing: Amendment 39–13478. Docket 2001–NM–156–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as listed in Boeing Special Attention Service Bulletin 737–25–1434, dated March 22, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the latch cable assembly from disconnecting from the latch block assembly of the door mounted escape slides, which could result in an escape slide not deploying in an emergency situation, accomplish the following:

Replacement

(a) Within 36 months after the effective date of this AD, replace existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers; per the Work Instructions of Boeing Special Attention Service Bulletin 737–25–1434, dated March 22, 2001.

Parts Installation

(b) As of the effective date of this AD, no person may install a nut, part number (P/N) BACN10R10L; or install a screw, P/N NAS623–3–8; on the latch block assembly of any airplane.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOC) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for repair of the latch cable assembly and the latch block assembly for the door mounted escape slide, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(d) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 737–25–1434, dated March 22, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 5, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3202 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–225–AD; Amendment 39–13479; AD 2004–03–35]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Beech 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Beech 400A and 400T series airplanes, that requires an inspection to determine the part number of the A194 roll trim printed circuit board (PCB), and replacement of certain PCBs with improved parts. This action is necessary to prevent intermittent sticking of the relays on the PCB in either the open or closed position, which could result in an out-of-trim condition that could require using considerable control wheel force to keep the wings level, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Beech 400A and 400T series airplanes was published in the **Federal Register** on November 4, 2003 (68 FR 62415). That action proposed to require an inspection to determine the part number of the A194 roll trim printed circuit board (PCB), and replacement of certain PCBs with improved parts.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Cost Impact

There are approximately 467 airplanes of the affected design in the worldwide fleet. The FAA estimates that 430 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $27,950, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–03–35 Raytheon Aircraft Company (Formerly Beech): Amendment 39–13479. Docket 2002–NM–225–AD.

Applicability: Model Beech 400A series airplanes having serial numbers RK–45, and RK–49 through RK–322 inclusive; and Model 400T series airplanes having serial numbers TT–1 through TT–180 inclusive, and TX–1 through TX–12 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent intermittent sticking of the relays on the roll trim printed circuit board (PCB) in either the open or closed position, which could result in an out-of-trim condition that could require using considerable control wheel force to keep the wings level, and consequent reduced controllability of the airplane, accomplish the following:

Inspection and Replacement, if Necessary

(a) Within 200 flight hours or 6 months after the effective date of this AD, whichever occurs first, perform an inspection to determine the part number of the A194 roll trim PCB, in accordance with Raytheon Service Bulletin SB 27–3464, dated December 2001.

(1) If the A194 roll trim PCB has a part number of 128–364122–7 or higher (*i.e.*, 128–364122–9, –11, etc.): No further action is required by this paragraph.

(2) If the A194 roll trim PCB does not have a part number of 128–364122–7 or higher: Before further flight, replace the A194 roll trim PCB with a PCB having a part number of 128–364122–7 or higher, in accordance with the service bulletin.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane an A194 roll trim PCB having part number 128–364122–1 or 128–364122–5.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions must be done in accordance with Raytheon Service Bulletin SB 27–3464, dated December 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 5, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3203 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–226–AD; Amendment 39–13480; AD 2004–03–36]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection of certain engine control cables to determine the batch number on the end fitting, and replacement of affected cables with new cables. This action is necessary to prevent failure of defective engine control cables, which could result in loss of the engine controls, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 5, 2003 (68 FR 67980). That action proposed to require a one-time inspection of certain engine control cables to determine the batch number on the end fitting, and replacement of affected cables with new cables.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from one commenter.

Request To Revise Service Information

The commenter requests that the service information be revised to include Dornier Service Bulletin SB–328–76–409, Revision 2, dated October 7, 2002, as an additional source of service information for the accomplishment of the actions required by the proposed AD. (The proposed AD references Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002, as the appropriate source of service information.) Revision 2 changes the ''Note'' on page 1 of the service bulletin from ''Other Engine Control Cables with different batch No's are not affected'' to ''Other Engine Control Cables with different or without batch No's are not affected.'' The commenter states that the revision to the ''Note'' is important to ensure affected operators do not waste resources by replacing engine control cables that do not need replacing.

The FAA agrees with the commenter's request. We reviewed Revision 2 of the service bulletin and find that the actions are otherwise essentially identical to Revision 1. We have revised paragraph (a) of this final to require accomplishment of the actions in accordance with either Revision 1 or Revision 2 of Dornier Service Bulletin SB–328–76–409.

Request To Clarify Paragraph (a)(2), Identification of Manufacturing Batch Number

The commenter also requests that the wording in paragraph (a)(2) of the proposed AD be changed. The commenter states that the text in paragraphs (a)(1) and (a)(2) is contradictory and misleading. Paragraph (a)(1) states, ''if no engine control cable has a P/N and an MBN specified in paragraph (a) of this AD, no further action is required by this paragraph.'' Paragraph (a)(2) states, ''if any engine control cable having the P/N or an MBN specified in paragraph (a) of this AD is found, before further flight, replace the cable in accordance with the Accomplishment Instructions of the service bulletin.'' The commenter states that paragraph (a)(2) is essentially telling operators that if the engine control cable inspected in paragraph (a) has part number (P/N) 001A761A1130–016, it must be replaced before further flight. The commenter states that the intent of the service bulletin is that an engine control cable be replaced only if the cable has P/N 001A761A1130–016 and is engraved with manufacturing batch number (MBN) 1000125850 or 1000144210.

We agree with the commenter's request to change the wording of paragraph (a)(2) in this final rule. As written, it is not clear that only engine control cables having a certain P/N that is engraved with a certain MBN must be replaced. We have changed the wording in paragraph (a)(2) of this final rule to ''if any engine control cable has a P/N and an MBN specified in paragraph (a) of this AD, before further flight, replace the cable in accordance with the Accomplishment Instructions of the service bulletin.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,445, or $65 per airplane.

Replacement of an engine control cable, if required, would take approximately 8 work hours, at an average labor rate of $65 per work hour. Parts would be provided at no cost to operators. Based on these figures, the cost impact of the replacement of an engine control cable is $520 per cable.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–03–36 Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Amendment 39–13480. Docket 2002–NM–226–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–76–409, Revision 2, dated October 7, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of defective engine control cables, which could result in loss of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

Identification of Manufacturing Batch Number

(a) Within 4,000 flight hours after the effective date of this AD, do a detailed inspection of the engine control cables for cables that have part number (P/N) 001A761A1130–016, engraved with manufacturing batch number (MBN) 1000125850 or 1000144210 installed. Inspect in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002; or Dornier Service Bulletin SB–328–76–409, Revision 2, dated October 7, 2002.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no engine control cable has a P/N and an MBN specified in paragraph (a) of this AD, no further action is required by this paragraph.

(2) If any engine control cable has a P/N and an MBN specified in paragraph (a) of this AD, before further flight, replace the cable in accordance with the Accomplishment Instructions of the service bulletin. Although the service bulletin specifies to send any engine control cable that has been removed from the airplane to the part manufacturer, this AD does not require that action.

Parts Installation

(b) As of the effective date of this AD, no person may install an engine control cable having P/N 001A761A1130–016, engraved with MBN 1000125850 or 1000144210, on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328–76–409, Revision 1, dated May 17, 2002; or Dornier Service Bulletin SB–328–76–409, Revision 2, dated October 7, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German airworthiness directive 2002–252, dated September 5, 2002.

Effective Date

(e) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 5, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3204 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–14–AD; Amendment 39–13484; AD 2004–02–51]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2004–02–51 that was sent previously to all known U.S. owners and operators of EMBRAER Model EMB–135 and –145 series airplanes by individual notices. This AD requires a one-time inspection of the aft rudder control rods to detect any discrepancy; a one-time inspection to determine if Access Panel 312AR is installed, and a revision to the Configuration Deviation List to remove any reference to Access Panel 312AR (thus prohibiting operation without that access panel installed); and further investigative and corrective actions, if necessary. The actions specified by this AD are intended to detect and correct failure of the control rods for the aft rudder, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 23, 2004, to all persons except those persons to whom it was made immediately effective by emergency AD 2004–02–51, issued January 23, 2004, which contained the requirements of this amendment.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of February 23, 2004.

Comments for inclusion in the Rules Docket must be received on or before March 19, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2004–NM–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The applicable service information may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Breneman, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On January 23, 2004, the FAA issued emergency AD 2004–02–51, which is applicable to all EMBRAER Model EMB–135 and –145 series airplanes.

Background

The FAA has received a report that the flightcrew of an EMBRAER Model EMB–135 series airplane experienced rudder control difficulties during takeoff. The airplane made an emergency landing; no injuries were reported. Investigation revealed that the upper and lower control rods for the aft rudder section had failed. (The rudder is composed of a forward and an aft section.) The National Transportation Safety Board is currently investigating the cause of the control rod failure. The airplane on which the incident occurred had accumulated 6,804 total flight hours and 6,371 total flight cycles. Although the effect is unknown at this time, the airplane was operating without Access Panel 312AR, as allowed by the Configuration Deviation List (CDL). Failure of these control rods, if not corrected, could result in loss of rudder control, or a possible rudder jam. Also, an unrestrained aft rudder could enter a flutter mode, which could result in loss of control of the airplane.

The rudder control rods on all EMBRAER Model EMB–135 and –145 series airplanes are identical to those on the affected Model EMB–135 airplane. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–27–A105, dated January 23, 2004, which describes procedures for:

- A one-time visual inspection, including measurement, of the aft rudder control rods to determine if they are assembled correctly and to detect signs of structural damage, cracks, pitting, or deformation.
- If any discrepancy is found, replacement of the control rods with new rods, accomplishment of a backlash test to determine the condition of the rudder bearings, and accomplishment of any related applicable corrective action.

The service bulletin also recommends that any airplane without Access Panel 312AR installed should have the panel reinstalled.

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, classified this service bulletin as mandatory and issued Brazilian emergency airworthiness directive 2004–01–07, dated January 23, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2004–02–51 to detect and correct failure of the control rods for the aft rudder, which could result in loss of control of the airplane. The AD requires accomplishment of the following actions per the service bulletin described previously (except as discussed below under the heading

''Difference Between This AD and the Service Bulletin''):

• A one-time general visual inspection of the aft rudder control rods to detect any discrepancy (including, but not limited to, incorrect installation, corrosion pitting, cracking, looseness, deformity, or structural damage).

• If any discrepancy is found, replacement of the affected aft rudder control rod with a new or serviceable control rod, accomplishment of a backlash test (to detect worn rudder bearings) and any applicable corrective action, and submission of the inspection results to the FAA.

This AD also requires the following actions, which are also specified by the parallel Brazilian emergency airworthiness directive:

• A general visual inspection to determine if Access Panel 312AR is installed, and re-installing the panel.

• A revision to the CDL to remove reference to Access Panel 312AR (thus prohibiting operation without that access panel installed).

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on January 23, 2004, to all known U.S. owners and operators of EMBRAER Model EMB–135 and –145 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Difference Between This AD and the Service Bulletin

Although the service bulletin recommends that all inspection results, whether positive or negative, be reported to the manufacturer, this AD requires operators to submit a report to us only if a discrepancy is found.

Differences Between This AD and the Parallel Brazilian Emergency Airworthiness Directive

The Brazilian emergency airworthiness directive specifies that, if any discrepancy is found, both control rods must be replaced. However, this AD requires that only discrepant control rods must be replaced before further flight. We find that replacement of only discrepant control rods will adequately address the unsafe condition.

Also, the Brazilian airworthiness directive specifies that, if Access Panel 312AR is missing, this panel must be installed before the next flight. However, this AD requires that this panel must be installed within 10 flight cycles after the inspection. In developing an appropriate compliance time for this installation, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the availability of necessary parts. In light of all of these factors, we find that a 10-flight-cycle compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

We have coordinated these differences with the DAC, and they concur.

Interim Action

This is considered to be interim action. The inspection report that is required by this AD will enable us, the DAC, and the manufacturer to obtain better insight into the unsafe condition, and eventually to develop further action to address the unsafe condition, if necessary. If further action is identified, we may consider further rulemaking.

Special Flight Permits

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. As amended, part 39 provides for the FAA to add special requirements for operating an airplane to a repair facility to do the work required by an airworthiness directive. For the purposes of this AD, we have determined that a special flight permit would be permitted, but with certain limitations.

Explanation of Editorial Change

In emergency AD 2004–02–51, the definition of a general visual inspection was incorrectly numbered as Note 2. It is actually Note 1. We have revised the number in this document.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of this comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2004–NM–14–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–02–51 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13484. Docket 2004–NM–14–AD.

Applicability: All Model EMB–135 and –145 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the control rods for the aft rudder, which could result in loss of control of the airplane, accomplish the following:

One-Time Inspection and Configuration Deviation List Revision

(a) Within 10 days or 100 flight cycles after the effective date of this AD, whichever is first, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a general visual inspection of the aft rudder control rods to detect any discrepancy (including, but not limited to, incorrect installation, corrosion pitting, cracking, looseness, deformity, or structural damage), and measure the dimension of the aft rudder control rods, per EMBRAER Alert Service Bulletin 145–27–A1–05, dated January 23, 2004.

(2) Perform a general visual inspection to determine if Access Panel 312AR is installed on the airplane.

(3) Revise the Configuration Deviation List (CDL) to remove Access Panel 312AR from the CDL (thus prohibiting operation without that access panel installed). (This may be accomplished by inserting a copy of this AD into the CDL.)

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Actions and Related Investigative Action

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD: Accomplish paragraphs (b)(1) and (b)(2) of this AD, as applicable.

(1) If any discrepancy is found during the inspection required by paragraph (a)(1) of this AD: Before further flight, replace the affected aft rudder control rod with a new or serviceable control rod, and perform a backlash test (to detect worn rudder bearings) and any applicable related corrective action, per EMBRAER Alert Service Bulletin 145–27–A105, dated January 23, 2004. (If superficial corrosion is found on the rod, but no other discrepancy is found, replacement of the rod is not required.)

(2) If Access Panel 312AR was not installed on the airplane during the inspection required by paragraph (a)(2) of this AD: Within 10 flight cycles after the inspection, install a new or serviceable panel in this location.

Reporting Requirement

(c) Submit a report of discrepancies found during the inspections required by paragraph (a) of this AD, and the test required by paragraph (b)(1) of this AD, to the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1320. Submit the report at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the inspection results, a description of the discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspections/test are done after the effective date of this AD: Submit the report within 7 days after the inspection.

(2) If the inspections/test were accomplished prior to the effective date of this AD: Submit the report within 7 days after the effective date of this AD.

Parts Installation

(d) After the effective date of this AD, no person may install an aft rudder control rod having part number 120–09421–251 (upper control rod) or 120–09421–249 (lower control rod), on any airplane, unless it has been inspected per the requirements of this AD.

Special Flight Permit

(e) Special flight permits with a limitation may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the backlash test required by this AD can be accomplished. The special flight permits would have a limitation that the discrepant aft rudder control rod must have been replaced.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) The actions shall be done inn accordance with EMBRAER Alert Service Bulletin 145–27–A105, dated January 23, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose Dos Campos–SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Brazilian emergency airworthiness directive 2004–010–07, dated January 23, 2004.

Effective Date

(h) This amendment becomes effective on February 23, 2004 to all persons except those persons to whom it was made immediately effective by emergency AD 2004–02–51, issued January 23, 2004, which contained the requirements of this amendment.

Issued in Renton, Washington, on February 9, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3350 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–45–AD; Amendment 39–13481; AD 2004–04–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) that supersedes AD 2002–01–09, which applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. AD 2002–01–09 currently requires you to inspect the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material; replace any engine-driven pump with any of the above problems; and ensure that the relief valve attachment screws are adequately

torqued and re-torque as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. This AD retains the actions from AD 2002–01–09, adds certain engine-driven pumps to the applicability, and requires eventual replacement of the pump with an improved design pump to assure that the unsafe condition does not recur. We are issuing this AD to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: This AD becomes effective on March 29, 2004.

On February 28, 2002 (67 FR 2323, January 17, 2002), the Director of the Federal Register approved the incorporation by reference of Pilatus PC–7 Service Bulletin No. 28–006 and Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001.

As of March 29, 2004, the Director of the Federal Register approved the incorporation by reference of the following:

—Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002;

—Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002; and

—Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002.

ADDRESSES: You may get the service information identified in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION: —

Discussion

Has FAA taken any action to this point? Reports of fuel leaking from certain engine-driven pumps on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes caused FAA to issue AD 2002–01–09, Amendment 39–12600 (67 FR 2323, January 17, 2002). AD 2002–01–09 currently requires the following on all Pilatus Models PC–7, PC–12, and PC–12/45 airplanes:

—Inspecting the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material;

—Replacing any engine-driven pump with signs of fuel leakage or extruding gasket material; and

—Ensuring that the relief valve attachment screws are adequately torqued and re-torqued as necessary.

What has happened since AD 2002–01–09 to initiate this action? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of the need to change AD 2002–01–09. The FOCA reports that problems are occurring on other engine-driven pumps that could be installed on the affected airplanes, and that the affected airplanes should have a certain engine-driven pump installed to ensure this unsafe condition does not reoccur.

What is the potential impact if FAA took no action? Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 5, 2003 (68 FR 67988). The NPRM proposed to supersede AD 2002–01–09 with a new AD that would:

—Retain the actions from AD 2002–01–09;

—Add certain engine-driven pumps to the applicability; and

—Require eventual replacement of the pump with an improved design pump to assure that the unsafe condition does not reoccur.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 278 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspections and re-torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 278 = $36,140.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	$3,900 per new pump	$3,965 per airplane.

What is the difference between the cost impact of this AD and the cost impact of AD 2002–01–09? The only difference between this AD and AD 2002–01–09 is the addition of affected engine-driven pumps. The number of airplanes that could have an affected pump installed and the costs associated with inspection and replacement are the same.

Compliance Time of This AD

What is the compliance time of the inspections? The compliance time of the inspections that are required by this AD is ''within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first.''

Why is the compliance time of the inspections presented in both hours TIS and calendar time? The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane operation if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that you detect and correct the unsafe condition defined in this document is in a timely manner, we are stating the compliance in both calendar time and hours TIS.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–45–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–01–09, Amendment 39–12600 (67 FR 2323, January 17, 2002), and by adding a new AD to read as follows:

2004–04–01 Pilatus Aircraft LTD.: Amendment 39–13481; Docket No. 2003–CE–45–AD; Supersedes AD 2002–01–09, Amendment 39–12600.

When Does This AD Become Effective?

(a) This AD becomes effective on March 29, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2002–01–09, Amendment 39–12600.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
(1) PC–7	All manufacturer serial numbers (MSN) equipped with either a Lear Romec part number (P/N) RG9570M (Pilatus P/N 968.84.51.103) engine-driven pump or a Lear Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) engine-driven pump.
(2) PC–12 and PC–12/45	All MSN equipped with a Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106) engine-driven pump.

Note: Pilatus installed these engine-driven pumps on MSN 101 through MSN 406 and MSN 408 through 419 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. These conditions could lead to fuel leakage and result in a fire in the engine compartment.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

(1) *Inspection:* Inspect the joints between the engine-driven pump housing, the relief valve housing, and the relief valve cover for signs of fuel leakage and extruding gasket material as follows:

Engine-driven pump P/N	Compliance	Procedures
(i) Lear Romec P/N RG9570M1 (Pilatus P/N 968.84.51.105) or Lear Romec P/N RG9570R1 (Pilatus P/N 968.84.51.106).	Within the next 20 hours time-in-service (TIS) after February 28, 2002 (the effective date of AD 2002–01–09) or within the next 30 days after February 28, 2002 (the effective date of AD 2002–01–09), whichever occurs first, unless already done.	Follow Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(ii) Lear Romec P/N RG9570M (Pilatus P/N 968.84.51.103).	Within the next 20 hours TIS after March 29, 2004 (the effective date of this AD) or within 30 days after March 29, 2004 (the effective date of this AD), whichever occurs first, unless already done.	Follow Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002.

(2) *Replacement/Modification:* Replace the engine-driven pump with one of the following before further flight after the inspection in paragraph (e)(1) of this AD if you find signs of fuel leakage or extruding gasket material or within 6 months after March 29, 2004 (the effective date of this AD) if you do not find signs of fuel leakage or extruding gasket material, unless already done:

Models	Pump replacement P/N	Procedures
(i) PC–7	Lear Romec P/N RG9570M1/M(Pilatus P/N 968.84.51.107).	Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002.
(ii) PC–12 and PC–12/45	Lear Romec P/N RG9570R1/M(Pilatus P/N 968.84.51.108).	Pilatus PC–12 Service Bulletin No. 28–010, and dated September 16, 2002.

(3) *Relief Valve Attachment Screw Torque:* Before further flight after the inspection (if you find no fuel leakage or extruding gasket material) and replacement required by this AD, ensure that the relief valve attachment screws are adequately torqued and re-torqued as necessary using the following:

(i) *For Pilatus Model PC–7 Airplanes:* Pilatus PC–7 Service Bulletin No. 28–006, dated August 10, 2001, or Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002.

(ii) *For Pilatus Models PC–12 and PC–12/45 Airplanes:* Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001.

(4) *Spares:* As of March 29, 2004 (the effective date of this AD), install only an engine-driven pump that is a part number referenced in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD. Before further flight after installation, do the relief valve attachment screw torque check as required by paragraph (e)(3) of this AD.

(5) *Unless Already Done Credit:* This AD retains actions from AD 2002–01–09.

(i) You may take inspection credit if you have one of the engine-driven pumps installed affected by AD 2002–01–09 and the specific actions are already done.

(ii) The actions of this AD do not apply if you have one of the engine-driven pumps installed that is referenced in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following Pilatus PC–7 Service Bulletin No. 28–006 and Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001; Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002; Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002; and Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002.

(1) On February 28, 2002 (67 FR 2323, January 17, 2002), and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of Pilatus PC–7 Service Bulletin No. 28–006 and Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001.

(2) As of March 29, 2004, and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of Pilatus PC–7 Service Bulletin No. 28–007, Revision No. 1, dated October 1, 2002; Pilatus PC–7 Service Bulletin No. 28–008, Revision 1, dated September 24, 2002; and Pilatus PC–12 Service Bulletin No. 28–010, dated September 16, 2002.

(3) You may get a copy of these documents from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Is There Other Information That Relates to This Subject?

(h) FOCA (Switzerland) AD HB 2003–392, dated September 15, 2003; and FOCA (Switzerland) AD HB 2003–251, dated June 16, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on February 10, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3351 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–365–AD; Amendment 39–13482; AD 2004–04–02]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires replacing the dual shuttle valve in the number 2 hydraulic system with a new, improved valve. This action is necessary to prevent failure of the dual shuttle valve in the number 2 hydraulic system,

with reduced maximum elevator rate on the left side, which could result in pilot-induced pitch oscillation and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on September 19, 2003 (68 FR 54862). That action proposed to require replacing the dual shuttle valve in the number 2 hydraulic system with a new, improved valve; and, for certain airplanes, modifying the hydraulic system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Revise Applicability/ Remove Requirement To Modify Hydraulic System

One commenter, the airplane manufacturer, requests that the FAA revise the proposed AD to limit the applicability of the proposed AD to airplanes on which Saab Modification 5952 (Saab Service Bulletin 2000–29–010) has been accomplished. The commenter notes that Swedish airworthiness directive 1–164, dated August 17, 2001, which is the parallel airworthiness directive for the FAA's proposed AD, was issued to require replacement of the dual shuttle valve introduced by Saab Modification 5952. Airplanes on which Saab Modification 5952 (or Saab Service Bulletin 2000–29–010) has not been accomplished should not be subject to the requirements of the proposed AD. Thus, the commenter requests that we revise the applicability statement of the proposed AD; and remove, from the proposed AD, paragraph (b), the section ''Differences Between the Proposed Rule, Swedish Airworthiness Directive, and Service Bulletins,'' and the paragraph in the Cost Impact section that addresses costs associated with accomplishing Saab Service Bulletin 2000–29–010.

We concur. Based on the information provided by the commenter, it is clear that the requirements of this AD apply only to airplanes on which Saab Modification 5952 (Saab Service Bulletin 2000–29–010) has been installed. Accordingly, we have revised the applicability statement, paragraph (a), and the Cost Impact section of this final rule. We have also removed references to accomplishment of the actions in Saab Service Bulletin 2000–29–010 throughout the final rule. Paragraphs affected by the removal of paragraph (b) from the body of this final rule have been re-identified accordingly. (The ''Differences'' section is not restated in the final rule, so no change is possible in this regard.)

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 3 airplanes of U.S. registry will be affected by this AD, that the required replacement will take approximately 4 work hours per airplane, and that the average labor rate is $65 per work hour. Parts will be provided to the operator at no charge. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $780, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–04–02 Saab Aircraft AB: Amendment 39–13482. Docket 2001–NM–365–AD.

Applicability: Model SAAB 2000 series airplanes, as listed in Saab Service Bulletin 2000–29–020, dated August 14, 2001; on which Saab Modification 5952 (Saab Service Bulletin 2000–29–010) has been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the dual shuttle valve in the number 2 hydraulic system, with reduced maximum elevator rate on the left side, which could result in pilot induced pitch oscillation, and consequent reduced controllability of the airplane, accomplish the following:

Replacement: Modified Airplanes

(a) Within 15,000 flight hours after completing Modification 5952, replace the dual shuttle valve in the number 2 hydraulic system with a new, improved valve, per the Accomplishment Instructions of Saab Service Bulletin 2000–29–020, dated August 14, 2001.

Note 1: Although Saab Service Bulletin 2000–29–020, dated August 14, 2001, specifies sending removed or replaced parts to the manufacturer or the vendor, this AD does not include such a requirement.

Parts Installation

(b) As of the effective date of this AD, no person may install a dual shuttle valve, part number 7329114–721, on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Saab Service Bulletin 2000–29–020, dated August 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Swedish airworthiness directive 1–164, dated August 17, 2001.

Effective Date

(e) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 9, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3349 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–174–AD; Amendment 39–13483; AD 2004–04–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. This amendment revises the applicability of the existing AD by adding airplanes. The actions specified by this AD are intended to prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of March 24, 2004.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 12, 2000 (65 FR 34063, May 26, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–10–21, amendment 39–11745 (65 FR 34063, May 26, 2000), which is applicable to certain Boeing Model 737 series airplanes, was published in the **Federal Register** on December 5, 2003 (68 FR 67975). The action proposed to continue to require a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, and corrective action, if necessary. The action also proposed to revise the applicability of the existing AD by adding airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,385 airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry will be affected by this AD.

For Group 1 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1: The actions that are currently required by AD 2000–10–21 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $195 per airplane.

For Group 2 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1: The new actions that are required by this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11745 (65 FR 34063, May 26, 2000), and by adding a new airworthiness directive (AD), amendment 39–13483, to read as follows:

2004–04–03 Boeing: Amendment 39–13483. Docket 2002–NM–174–AD. Supersedes AD 2000–10–21, Amendment 39–11745.

Applicability: Model 737–300, –400, and –500 series airplanes equipped with IPECO flightcrew seats, as listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the flightcrew seats during acceleration and take-off of the airplane, which could result in reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Perform a one-time general visual inspection of the seat locks and seat tracks of the flightcrew seats to ensure that the seats lock in position and to verify that lock nuts and bolts of adequate length are installed on the rear track lock bracket, at the applicable time and per the Work Instructions of the applicable service bulletin specified in Table 1 of this AD. Table 1 follows:

TABLE 1.—COMPLIANCE TIME/SERVICE BULLETIN

Airplanes—	Compliance time—	Service bulletin—
For Group 1 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.	Within 90 days after September 26, 2001 (the effective date of AD 2000–10–21, amendment 39–11745).	Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998.
For Group 2 airplanes listed in Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.	Within 90 days after the effective date of this AD.	Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action

(1) If the seat lock pin fully engages in all lock positions of the seat track, and the rear track lock bracket is correctly installed: No further action is required by this AD.

(2) If the seat lock pin does not fully engage in all positions of the seat track, and lock nuts and bolts of adequate length are not installed on the rear track lock bracket: Prior to further flight, install lock nuts and bolts of adequate length on the track lock bracket and verify proper seat movement and seat lock operation, in accordance with the applicable service bulletin.

Note 2: Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, refers to IPECO Service Bulletin A001–25–47, dated January 13, 1992, as an additional source of service information for accomplishment of the actions required by paragraph (a) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(b) For Group 2 airplanes: Inspections and corrective actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously per AD 2000–10–21, amendment 39–11745, are approved as alternative methods of compliance with the requirements of this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998; or Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–25A1363, Revision 1, dated March 28, 2002, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–25A1363, dated November 5, 1998, was approved previously by the Director of the Federal Register as of June 12, 2000 (65 FR 34063, May 26, 2000).

(3) Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on March 24, 2004.

Issued in Renton, Washington, on February 9, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–3348 Filed 2–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301, and 602

[TD 9114]

RIN 1545–AY50

Electronic Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the voluntary electronic furnishing of statements on Forms W–2, ''Wage and Tax Statement,'' under sections 6041 and 6051, and statements on Forms 1098–T, ''Tuition Statement,'' and Forms 1098–E, ''Student Loan Interest Statement,'' under section 6050S. These final regulations affect businesses, other for-profit institutions, and eligible educational institutions that wish to furnish these required statements electronically. The regulations will also affect individuals (recipients), principally employees, students, and borrowers, who consent to receive these statements electronically.

DATES: *Effective Date:* These regulations are effective February 18, 2004.

Applicability Date: These regulations apply to statements and reports required to be furnished after February 13, 2004. The rules relating to maintenance of access to Web site statements also apply to statements and reports required to be furnished after December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara at (202) 622–4910 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1729. Responses to this collection of information are required to obtain the benefit of providing payee statements electronically.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent or recordkeeper varies depending on individual circumstances, with an estimated average of 6 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:SP Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On February 14, 2001, the IRS published a notice of proposed rulemaking (by cross reference to temporary regulations) and a notice of public hearing, (REG–107186–00) (66 FR 10247). The regulations proposed to permit the voluntary electronic furnishing of (1) statements on Form W–2 under sections 6041 and 6051, (2) ''Tuition Statements'' (Form 1098–T) under section 6050S, and (3) ''Student Loan Interest Statements'' (Form 1098–E) under section 6050S. These proposed amendments were intended (1) to increase electronic filing consistent with section 2001 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (July 22, 1998); and (2) to facilitate the use of electronic communication and record keeping consistent with the Electronic Signatures in Global and National Commerce Act (E–SIGN Act) Public Law No. 106–229, 114 Stat. 464 (2000), 15 U.S.C. sections 7001 through 7006 (2000). The IRS received written comments on the proposed regulations. A public hearing was held on July 25, 2001. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision. The temporary regulations under sections 6041, 6050S, 6051, and 6724 are removed.

On December 18, 2002, final regulations were issued under section 6050S (TD 9029), addressing information reporting for qualified tuition payments and reimbursements; TD 9029 also renumbered the regulations under section 6050S.

Explanation of Revisions and Summary of Comments

1. Expansion to Additional Statements, Notices, and Reports

Five commentators recommended that the regulations be expanded to allow the electronic furnishing of additional statements and reports, including Forms 5498 and 1099–R. After the IRS issued the proposed regulations, Congress enacted the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107–147 (March 9, 2002). Section 401 of JCWAA permits the electronic furnishing of any statement required under subpart B of part III of subchapter A of chapter 61 of Title 26 (sections 6041 through 6050T). Section 401 of JCWAA specifically eliminated the first-class-mailing requirement that prevented electronic furnishing of statements under sections 6042(c), 6044(e), and 6049(c)(2). In addition, Congress expressed its support for electronic furnishing of all statements required by the Code. See Joint Committee on Taxation Staff, Technical Explanation of the ''Job Creation and Worker Assistance Act of 2002,'' 107th Cong., 2d Sess. (2002) at page 27.

Section 401 of JCWAA permits the electronic furnishing of all statements required under sections 6041 through 6050T, if the recipient consents to receive the statement in a manner similar to the one permitted by regulations under section 6051 or in such other manner as provided by the Secretary. Because section 401 of JCWAA authorizes the electronic furnishing of all statements required under sections 6041 through 6050T, final regulations are not necessary to allow the voluntary electronic furnishing of statements required under sections 6041 through 6050T, as long as the recipient consents to receive the statement in a manner similar to the one permitted under these final regulations. In addition, Notice 2004–10 permits

electronic furnishing of the Form 1099–R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts, Form 1099–MSA, Distributions From an Archer MSA or Medicare+Choice MSA, Form 1099–Q, Payments from Qualified Education Programs (Under Section 529 or 530), Form 5498, Individual Retirement Arrangement Contribution Information, Form 5498–ESA, Coverdell ESA Contribution Information, and Form 5498–MSA, Archer MSA or Medicare+Choice MSA Information, payee statements.

2. Electronic Mail Attachments

The only method of electronic furnishing specifically authorized by the proposed regulations required posting on Web sites. Two commentators recommended that the regulations allow taxpayers to send statements as attachments to e-mail. One commentator stated that some organizations might not wish to provide tax statements by e-mail because of security and privacy concerns.

The final regulations do not restrict furnishers solely to the use of Web site technology. Treasury and the IRS believe that Web site technology currently provides the most secure method of furnishing statements electronically but do not intend to limit the technology to be used in furnishing statements electronically. Accordingly, under the final regulations, taxpayers are permitted to furnish statements through any electronic means to which the recipient consents, including by e-mail.

3. Standards To Ensure Confidentiality of Taxpayer Information

One commentator recommended that the IRS adopt security requirements that require simply a sign-on and a password. Two commentators recommended against adoption of specific standards. The final regulations do not adopt specific security standards to ensure the confidentiality of recipient information. Rather, the final regulations leave room for security methodologies to evolve through advances in technology.

4. Consent Consistent With the E–SIGN Act's Notice and Consent Provisions

The proposed regulations adopted notice and consent requirements consistent with the E–SIGN Act. Three commentators stated that the notice and consent requirements of the regulation should not apply to the electronic transmission of statements between employers and employees. One commentator observed that the notice and consent requirement will require the employer to modify existing databases and/or create a separate data base to distinguish between employees who have consented to receive statements electronically and those who will receive a paper statement. The commentator asserted that the cost of these database changes would offset any savings from electronic furnishing. Two commentators stated that credit unions could not efficiently provide statements to their employees electronically, if the credit unions were subject to the regulation's (E–SIGN Act's) notice and consent requirements.

The final regulations retain the notice and consent requirements. The notice and consent requirements are justified on tax administration grounds; it is important that taxpayers be able to demonstrate the ability to receive the tax statements electronically and then actually receive them. Moreover, the IRS and Treasury continue to believe that electronic furnishing should be voluntary for recipients as well as furnishers to accommodate recipients who prefer to receive their statements by traditional paper delivery for perceived security and privacy reasons. Section 401 of JCWAA, which adopted the notice and consent requirements in the temporary regulations, suggests that Congress also believes that electronic furnishing should be voluntary.

5. Verification of Receipt

Two commentators stated that, since the recipient chooses whether to receive information electronically, the recipient should be responsible for having the hardware and software necessary to receive the information electronically. The commentators pointed out that electronic mail systems are not standardized and some systems do not provide verification of delivery.

The regulations were not changed to reflect these comments. Both the furnisher and the recipient must voluntarily participate in the electronic delivery system. Both parties are responsible for ensuring that the system complies with the requirements of the regulations.

6. Consent Demonstrating Ability To Obtain Statements

One commentator recommended clarification of the example provided in the regulations regarding consent from the recipient. The commentator noted that a recipient's being able to receive and send e-mail does not necessarily prove that the recipient can access a Web site and download the statement. The commentator recommended an example describing alternatives to consent by e-mail.

The rule for consent requires that the recipient demonstrate the ability to access statements, which is done in the regulation's example by opening the attachment. However, the IRS agrees with the commentator's observation and has added two examples of alternative methods of providing consent in the final regulation.

7. Posting Despite Lack of Consent to Electronic Delivery

Two commentators recommended that the regulations expressly permit furnishers to post all their statements to a Web site and to send each recipient his/her statement as an e-mail attachment, even if the recipient has not consented to electronic furnishing. The furnisher could then provide paper copies of the statements to recipients who did not consent to electronic furnishing. The commentators cited the ease and economy of total versus piecemeal posting.

The final regulations do not expressly adopt the recommendation. However, the regulations do not prohibit a furnisher from storing all statements on the Web server. Whether the furnisher stores all statements or only those statements for which consents are received is a business decision for the furnisher.

8. Contact Information of Person To Whom a Withdrawal of Consent Should Be Furnished

Three commentators noted that providing the contact information for a specific individual to whom withdrawal of consent should be furnished may cause confusion, because in many large companies no single individual can accommodate communications from a potentially large number of recipients. The commentators suggest that the regulations provide that the recipients may be provided the name, address, phone number and e-mail address of an individual or department, such as a Human Resources Department, or Payroll Department on the disclosure statement. The regulations have been amended to provide that either the name of an individual or of a department may be included in the disclosure statement.

9. Definition of High Importance

Two commentators requested clarification of the term *high importance* in proposed §§ 1.6050S–1(a)(6)(i), 1.6050S–2(a)(6)(i), and 31.6051–1(j)(6)(i). The commentators noted that if this term refers to assigning a high priority to the e-mail, as some e-mail

software allows, there must be allowances made for e-mail software that does not have that capability. The commentators suggest that in a case where the sending or receiving software does not offer or recognize levels of priority, the regulations should allow the use of a subject line stating ''HIGH IMPORTANCE—IMPORTANT TAX RETURN DOCUMENT AVAILABLE.''

The final regulations do not require furnishers to assign high priority to e-mail because some software does not have this capability and the IRS and Treasury do not intend to favor any particular technology. Accordingly, furnishers will not be required to use e-mail software with the capability of assigning high priority.

10. Use of Other Subject Lines

One commentator expressed concern that requiring use of the language ''IMPORTANT TAX RETURN DOCUMENT AVAILABLE'' on the subject line of e-mail notices could be exploited to spread a computer virus through e-mails with the same subject line. The commentator suggests that each organization be permitted to create its own subject line containing the name of the issuing organization.

The regulations have not been amended to include this modification of the subject line. It is important to use standard language to identify the statement. Moreover, to prevent the spread of computer viruses, the recipient need only monitor who sent the e-mail.

11. Undeliverable Notice

One commentator suggested that when an electronic notice is returned and the furnisher notifies the recipient, the recipient may give the furnisher a corrected electronic address to receive the statement electronically. The consent rule in the final regulations allows the furnisher to obtain a new address from the recipient and resend the notice.

12. Allowable Period to Deliver Paper Statement

Two commentators recommended that if the recipient states that he or she no longer has an e-mail address or Internet access, and desires a paper statement, the furnisher should construe the recipient's statement as a withdrawal of consent. Furnishers will then be allowed a certain number of days to furnish the paper statement to the recipient. In addition, several members of the information reporting industry requested that a cut-off date be provided for withdrawing consent.

The final regulations retain the rules regarding withdrawal of consent, but allow the furnisher to treat a request for a paper statement as a withdrawal of consent. Treasury and the IRS do not think the regulations should impose a cut-off date for withdrawing consent. Furnishers may, however, provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date, thereby imposing their own cut-off date for withdrawing consents.

The final regulations retain the rule that a withdrawal of consent will not affect a statement that has been furnished electronically. Thus, if the withdrawal takes effect after the statement is furnished electronically, the statement will be considered timely if it was furnished electronically by the applicable due date. The final regulations also provide that if the withdrawal of consent takes effect before the statement is furnished electronically a paper statement must be furnished. In this case, a paper statement furnished after the statement due date will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher. This extension of time eliminates the need to address reasonable cause for late filing under section 6724. Therefore, the proposed amendment to the regulations under section 6724 is not adopted and temporary regulation § 301.6724–1T is removed.

13. Corrected Statements

Two commentators requested that the furnisher be able to post both Forms W–2c and replacement Forms W–2 on the Web site. The commentators noted that an employer may prefer to completely replace an employee's W–2, if it can be done before W–2s are filed with the Social Security Administration, thereby avoiding the W–2c process. The regulations have not been amended to allow a replacement Form W–2 if a Form W–2c is otherwise required. The purpose of the regulations is to describe the manner in which statements may be furnished electronically. The regulations are not intended to change the established procedures for correcting statements. Employers should consult IRS forms and instructions for the appropriate correction procedures.

14. Access Period

Two commentators recommended shortening the period of time during which statements can be accessed by changing the period's end date from October 15th to April 30th (or August 15) to reduce the amount of time computer hackers will have to access the confidential information on the Web site. One commentator noted that even if a recipient intends to apply for two extensions, it is highly likely that the recipient will have accessed the Form W–2 on the Web site by April 15 to determine whether a payment was necessary by that date. One commentator suggested that furnishers have the option to maintain statements on the Web site until April 30, as long as they provide replacements through October 15 by paper or as attachments to an e-mail.

The final regulations do not change the access period. It is the responsibility of the furnisher to maintain a secure Web site. It is important to allow access to the Web site during the entire filing season (including the period of extensions) to enable taxpayers to import the information directly to their returns if they choose to file electronically.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations.

Final Regulatory Flexibility Analysis

The collection of information contained in §§ 1.6041–2, 1.6050S–2, 1.6050S–4, and 31.6051–1 is required if a person required to furnish a taxpayer with a statement wishes to furnish the statement electronically. This information will be used to determine that the recipient has consented to receive the statement electronically. The objectives of these final regulations are to provide uniform, practicable, and administrable rules for providing information statements electronically. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities), small corporations and partnerships, and small employers.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations impose the least economic burden on small entities of all of the alternatives considered. The collection of information is required only from persons receiving the statements electronically using a method authorized by the final regulations.

Drafting Information

The principal author of these final regulations is Michael E. Hara, of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for ''Section 1.6041–2T, ''Section 6050S–4T,'' and ''Section 6050S–2T'' and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6041–2 also issued under 26 U.S.C. 6041(d). * * *

Section 1.6050S–2 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–4 also issued under 26 U.S.C. 6050S(g). * * *

■ **Par. 2.** Section 1.6041–2(a)(5) is added to read as follows:

§ 1.6041–2 Return of information as to payments to employees.

(a) * * *

(5) *Statement for employees.* An employer required under this paragraph (a) to file Form W–2 with respect to an employee is also required under sections 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W–2 in accordance with section 6051 and the regulations.

* * * * *

§ 1.6041–2T [Removed]

■ **Par. 3.** Section 1.6041–2T is removed.

■ **Par. 4.** Section 1.6050S–2 is added to read as follows:

§ 1.6050S–2 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.

(a) *Electronic furnishing of statements*—(1) *In general.* A person required by section 6050S(d) to furnish a written statement regarding payments and reimbursements or refunds of qualified tuition and related expenses (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or

before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, ''IMPORTANT TAX RETURN DOCUMENT AVAILABLE.'' If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (b) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(c) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2004.

1.6050S–4T [Removed]

■ **Par. 5** Section 1.6050S–4T is removed.

■ **Par. 6** Section 1.6050S–4 is added to read as follows:

§ 1.6050S–4 Information reporting for payments of interest on qualified education loans.

(a) *Electronic furnishing of statements*—(1) *In general.* A person required by section 6050S(d) to furnish a written statement regarding payments of interest on qualified education loans (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) *Format.* The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, ''IMPORTANT TAX RETURN DOCUMENT AVAILABLE.'' If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished though a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2003.

§ 1.6050S–2T [Removed]

■ **Par. 7** Section 1.6050S–2T is removed.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Par. 8.** The authority citation for part 31 is amended by revising the entry for ''31.6051–1(d'') and removing the entry

for ''Section 31.6051–1T'' to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6051–1 also issued under 26 U.S.C. 6051. * * *

■ **Par. 9.** In § 31.6051–1, paragraph (j) is added to read as follows:

§ 31.6051–1 Statements for employees.

* * * * *

(j) *Electronic furnishing of statements*—(1) *In general.* A person required by section 6051 to furnish a written statement on Form W–2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W–2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (6) of this section is treated as furnishing the Form W–2 in a timely manner.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the Form W–2 in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the Form W–2 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (j)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in hardware or software required to access the Form W–2 creates a material risk that the recipient will not be able to access the Form W–2, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Form W–2 and inform the recipient that a new consent to receive the Form W–2 in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (j)(2)(i) of this section, a new consent or confirmation of consent to receive the Form W–2 electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (j)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive Form W–2 electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive Form W–2 electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished Form W–2. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (j)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive Form W–2 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive Form W–2 electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished Form W–2. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Form W–2 electronically in the manner described in paragraph (j)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive Form W–2 electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive Form W–2 electronically in the manner described in paragraph (j)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (j)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the Form W–2 will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each Form W–2 required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the first Form W–2 required to be furnished following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (j)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (j) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W–2, and the date when the Form W–2 will no longer be available on the Web site. The recipient must be informed that the Form W–2 may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the Form W–2 must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters,

''IMPORTANT TAX RETURN DOCUMENT AVAILABLE.'' If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (j)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected Form W–2.* If the furnisher has corrected a recipient's Form W–2 that was furnished electronically, the furnisher must furnish the corrected Form W–2 to the recipient electronically. If the recipient's Form W–2 was furnished through a Web site posting and the furnisher has corrected the Form W–2, the furnisher must notify the recipient that it has posted the corrected Form W–2 on the Web site within 30 days of such posting in the manner described in paragraph (j)(5)(i) of this section. The corrected Form W–2 or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original Form W–2 or the corrected Form W–2 was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Forms W–2 furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the Forms W–2 relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W–2 that are posted on the Web site through October 15 of the year following the calendar year to which the Forms W–2 relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (j)(7) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(8) *Effective date.* This paragraph (j) applies to Forms W–2 required to be furnished after February 13, 2004. Paragraph (j)(6) of this section also applies to Forms W–2 required to be furnished after December 31, 2003.

§ 31.6051–1T [Removed]

■ **Par. 10.** Section 31.6051–1T is removed.

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

■ **Par. 11.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.6724–1T [Removed]

■ **Par. 12.** Section 301.6724–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 13.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 14.** In § 602.101, paragraph (b) is amended by:

■ 1. Removing the following entries from the table:

1.6041–2T	1545–1729
1.6050S–2T	1545–1729
1.6050S–4T	1545–1729
31.6051–1T	1545–1729

■ 2. Revising the entry for ''31.6051–1'' in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
31.6051–1	1545–0008 1545–0182 1545–0458 1545–1729
* * * * *	

■ 3. Adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6041–2	1545–1729
* * * * *	
1.6050S–2	1545–1729
* * * * *	
1.6050S–4	1545–1729
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 12, 2004.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 04–3544 Filed 2–13–04; 10:16 am]

BILLING CODE 4830–01–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–5; Order No. 1391]

Negotiated Service Agreements

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This document promulgates a final rule on procedural requirements for baseline and functionally equivalent Negotiated Service Agreements. The final rule incorporates relatively minor changes to the text of the rule as proposed, except in the area of the requisite Postal Service financial analysis. Adoption of this rule will provide the Postal Service and others with guidance on the procedures that will govern future cases involving Negotiated Service Agreements.

DATES: Effective March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, (202) 789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 52552 (September 4, 2003)

Background

On August 27, 2003, the Commission issued PRC Order No. 1383 to establish a rulemaking docket for the purpose of considering new procedural rules applicable to Postal Service requests for baseline and functionally equivalent Negotiated Service Agreements.[1] The order included a proposal for the text of the procedural rules, and established a period, which concluded on September

[1] Notice and Order Establishing Rulemaking Docket for Consideration of Proposed Rules Applicable to Baseline and Functionally Equivalent Negotiated Service Agreements, PRC Order No. 1383, August 27, 2003 (Order).

29, 2003, for interested persons to comment. Seventeen parties submitted comments, arranged into twelve separate filings, expressing diverse opinions and suggesting many potential improvements to the proposed rules.[2] The order also established a period for reply comments, which concluded on October 14, 2003. Eight parties submitted reply comments, arranged into seven separate filings.[3] In addition, two parties filed supplemental comments.[4] The Commission appreciates the efforts that went into the preparation of the comments and reply comments, and has considered all views and suggestions for improving the proposed rules.[5]

[2] PostCom Comments on Notice and Order Establishing Rulemaking Docket for Consideration of Proposed Rules Applicable to Baseline and Functionally Equivalent Negotiated Service Agreements [NSA Rulemaking], September 25, 2003 (PostCom); Comments of Capital One Services, Inc., September 29, 2003 (Capital One); Comments of The Direct Marketing Association, Inc., Magazine Publishers of America, Inc., Mail Order Association of America, and National Postal Policy Council, Parcel Shippers Association, September 29, 2003 (DMA *et al.*); Comments of Discover Financial Services, Inc., September 30, 2003 (Discover); Comments of EW Consulting Relative to Retail Applications, September 30, 2003 (EW); Comments of First Data Corporation, September 29, 2003 (First Data); Initial Comments of Major Mailers Association, September 29, 2003 (MMA); Comments of the National Newspaper Association on Proposed Negotiated Service Agreement Rules, September 29, 2003 (NNA); Office of the Consumer Advocate Comments, September 29, 2003 (OCA); Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. Comments on Proposed NSA Rules Pursuant to Commission Order No. 1383, September 29, 2003 (Valpak); Comments of Pitney Bowes Inc., September 29, 2003 (Pitney Bowes); Initial Comments of the United States Postal Service, September 30, 2003 (Postal Service).

[3] Reply Comments of Discover Financial Services, Inc., October 14, 2003 (Discover Reply); Reply Comments of Major Mailers Association, October 14, 2003 (MMA Reply); Reply Comments of the Newspaper Association of America, October 14, 2003 (NAA Reply); Office of the Consumer Advocate Reply Comments, October 14, 2003 (OCA Reply); Reply Comments of United Parcel Service, October 14, 2003 (UPS Reply); Reply Comments of the United States Postal Service, October 14, 2003, Errata to Reply Comments of the United States Postal Service, October 16, 2003, Notice of the United States Postal Service of Filing of Corrected Version of Reply Comments, October 16, 2003, Reply Comments of the United States Postal Service, October 16, 2003 [Corrected Version] (Postal Service Reply); Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. Reply Comments on Proposed NSA Rules Pursuant to Commission Order No. 1383, October 14, 2003 (Valpak Reply).

[4] Office of the Consumer Advocate Supplemental Comments on NSAs vs. Pilot Tests, October 10, 2003 (OCA Supplemental); Supplemental Comments of the United States Postal Service, October 17, 2003 (Postal Service Supplemental).

[5] The following motions are granted: Motion for Late Acceptance of Comments by Discover Financial Services, Inc., September 30, 2003 (Discover Motion); Motion for a One-Day Extension of Time to File Comments, September 30, 2003 (EW Motion); Motion for a One-Day Extension of Time to File Comments, September 29, 2003 (Postal Service Motion); Office of the Consumer Advocate Motion to be Permitted to File Supplemental Comments on NSAs vs. Pilot Tests, October 10, 2003 (OCA Motion); Motion of the United States Postal Service for Leave to File Supplemental Comments, October 17, 2003 (Postal Service Supplemental Motion).

The comments express opinions on many issues, with most issues receiving a fair balance of comments from more than one perspective. Even with differences of opinion on specific rules, all parties appear to acknowledge the desirability of implementing rules specific to Negotiated Service Agreements. The Postal Service (the party that is directly responsible for complying with the rules) provides excellent commentary which tends to express an opinion that falls in the center of the extremes of all other commentary and is generally supportive of most provisions of the proposed rules. The comments from all parties have provided the Commission with a better appreciation of the benefits, and more importantly, the limitations of each rule proposal. As everyone gains experience with the new rules, there are sure to be suggestions for improvement that may be implemented in the future. The changes made to the proposed rules resulting from incorporating suggestions from the comments are relatively minor, and given the anticipation of future rulemakings in regard to these rules, the Commission has decided not to solicit further comments after incorporating these changes. The factors discussed above indicate that the rules as proposed are reasonable and appropriate for initial implementation. Thus, the Commission finds it appropriate to issue final rules at this time. The final rules appear following the Secretary's signature.

Several general themes run through the comments. An overview of the most frequently addressed themes will be summarized below, followed by a rule by rule examination of each significant comment.

The perceived burden that the rules impose is a common topic in most of the commentary. Some parties consider the burden imposed by the rules so great that it would inhibit mailers from pursuing Negotiated Service Agreements. There are comments indicating that it is premature to establish any detailed requirements before gaining further experience with Negotiated Service Agreements. There is support for adapting the arguably less burdensome rules for experimental classifications for use with Negotiated Service Agreements as an alternative to the proposed rules. Other parties want to add more requirements to the proposed rules. There are suggestions to add requirements to further justify a Negotiated Service Agreement classification versus a niche classification. There are suggestions to add provisions to facilitate the propagation of functionally equivalent agreements. There also are requests to add rules applicable to specific types of agreements, for example, agreements predicated on declining-block discounts. The fairly even balance of comments on burden, both pro and con, from this diverse group of mailers indicate to the Commission that it has struck the appropriate balance on burden in the proposed rules.

The requirements in regard to presenting a financial analysis of the Negotiated Service Agreement received many comments. There is limited disagreement over whether the financial analysis should be preformed over the duration of the agreement as proposed. There is considerable discussion of potential problems with obtaining mailer-specific information, and the ability to make projections into the future. Some comments indicate that the Commission is requesting too much information, with suggestions that the Postal Service should only have to show that the agreement improves its financial position. Other comments indicate the need for considerably more information. For example, there is a request to require all cost information to be presented by cost segment. There are other suggestions to require the Postal Service to show that each element of an agreement adds to contribution and that the overall agreement materially improves the financial position of the Postal Service. Again, the proposed rule appears to represent a fair compromise among the parties wanting less onerous requirements and those wanting more detailed requirements.

The Commission and the Postal Service are substantially in agreement on what a financial analysis should include for the first year of a multi-year Negotiated Service Agreement. For the potential second and third years of an agreement, the Notice of Proposed Rulemaking (NPRM) suggests a fairly mechanical approach to the analysis of the follow-on years. It requires the presentation for the second and third years to mimic the presentation of the first year. The Postal Service, alternatively, proposes to focus on factors that might cause a material change to the first year's financial analysis in presenting the financial analysis for the follow-on years. Both approaches should provide a sufficient financial analysis. Both approaches also

suffer from the same problems of availability and reliability of information the further out in time that information is projected. Because there is potentially some advantage to the Postal Service's approach, the Commission will adopt the Postal Service's proposal as presented in its initial comments.

Comments in regard to the analysis of competitive effects range from full endorsement, to considering the requirement exceedingly burdensome. The requirement is written in general terms that allow the proponents to formulate a response that is appropriate under the circumstances. Other than potential difficulties with complying with the proposed rule, the comments focus on whether the proponents of an agreement or the parties challenging the agreement should have the initial burden of making a competitive effects argument. The Commission considers the proponents of the agreement to be the most knowledgeable and have the better resources available, after going through the negotiation process, to most efficiently respond to this information request. In many instances, such as worksharing arrangements, the response might be minimal. Several parties argue that it should be the responsibility of parties in opposition to the request to intervene and protect their own interests. The Commission is not persuaded that the parties concerned with the potential impacts of a request should carry the initial burden of proving adverse competitive effects. The Postal Service, as a governmental entity, has an obligation to consider the impact of its actions on the market, and to avoid causing unreasonable harm to private enterprises. It is appropriate that it make public its analysis in fulfilling this obligation. The Commission acknowledges that analyzing competitive effect issues can be complex, and will require time and thought, but it is necessary given the requirements of the Act. This requirement shall remain in the final rule as originally proposed.

There is considerable concern about the protection of sensitive information. For the Commission to fulfill its statutory duty in a way favorable to the proponents, it requires information on which to base its recommendations. This is part of the ''cost'' of obtaining a special arrangement with the Postal Service. Participants will be required to cooperate with the Commission and provide relevant information to justify all requests, even if this information is considered sensitive. Requesting the application of protective conditions to safeguard sensitive information from public disclosure, if appropriate, remains an option.

The Commission expressed its intent to make the actual text of proposed Negotiated Service Agreements public. This position resolves many issues such as providing transparency, curtailing claims of secret dealings and discrimination, being able to openly review the terms and conditions of the agreement, and making sufficient information available so that similarly situated mailers can seek the opportunity to benefit from a functionally equivalent agreement. Theoretically, the imposition of protective conditions remains available even for the text of an actual agreement, but this procedural step likely would make the review process more cumbersome and, especially as to monopoly products, commentators failed to describe circumstances where such a step would seem justified.

There is considerable discussion on the procedures to be followed when information required by the rules is either not available and cannot be made available without undue burden, or is not required in light of the characteristics of the request. Comments represent both ends of the spectrum, from making all filing requirements mandatory, to requiring only a certification. The Commission will require the Postal Service to request waivers early in the process in the interest of resolving issues quickly in keeping with the goal of issuing recommendations in an expeditious manner.

Finally, there are suggestions that the Commission establish a 150-day procedural schedule for reviewing requests predicated on baseline Negotiated Service Agreements. The Commission has decided to not establish an artificial deadline for issuing a recommended decision at this time, but may revisit this issue in the future.

The Commission recognizes that the rules apply in an area where it has only the experience of one Postal Service request, and anticipates future rulemakings to fine tune the rules as future experience might warrant. However, the Commission finds it is important to issue these rules at this time to gather real experience with their implementation, and to provide guidance for future Postal Service requests predicated on Negotiated Service Agreements. The Secretary shall arrange for the publication of this Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements in the **Federal Register**.

The following is a rule by rule discussion of the comments received by the Commission in regard to this rulemaking.

Section 3001.5(r)—Definitions

The proposed definition for ''Negotiated Service Agreement'' is stated in § 3001.5(r) as follows: ''*Negotiated Service Agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or postal services in accordance with the terms and conditions of the contract.''

The Postal Service contends that although it would not be inaccurate in all instances, the term ''postal services'' might be too restrictive. It suggests that the definition focus on the Commission's statutory function, and proposes changing the term ''postal services'' to ''classification changes.'' It argues that ''classification changes'' encompasses both distinct levels of service, as well as less expansive changes to the Domestic Mail Classification Schedule. The definition proposed by the Postal Service states: ''*Negotiated Service Agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or classification changes in accordance with the terms and conditions of the contract.'' Postal Service Reply at 2–3, Attachment at 1.

The Commission finds that in most instances either ''postal services'' or ''classifications'' would be appropriate for use in the definition.[6] However, based on the Postal Service's contention that ''postal services'' might be too restrictive,[7] the Commission explored alternative terminology which could provide the Postal Service with the greatest flexibility and place the least restrictions on what it can propose when negotiating a Negotiated Service Agreement. The Commission decided upon the general terminology ''terms of

[6] The Commission omits the word ''changes'' from the Postal Service's suggestion of ''classification changes'' because a Negotiated Service Agreement typically should describe a classification.

[7] The Commission hypothesizes that ''classifications'' also might be too restrictive. Assume a multi-element Negotiated Service Agreement where one element involves a function (or term of service) that falls short of being considered a classification on its own under the Commission's statutory authority. If the overall Negotiated Service Agreement is within the Commission's jurisdiction, then the term of service assumed above would be included in the Commission's review by virtue of the Commission's jurisdiction over the overall agreement.

service'' in place of either ''postal services'' or ''classifications'' for use in the final rule. ''Terms of service'' is very broad, but still refers to a functional or ''service'' element of an agreement. The definition appearing in the final rule shall state: ''*Negotiated Service Agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract.''

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees, § 3001.51 Applicability

Section 3001.51, which is currently in effect, governs the applicability of rules for requests to change rates or fees. The rulemaking proposes to add a sentence to § 3001.51 which specifies that a request based on a Negotiated Service Agreement, which otherwise would be considered pursuant to the rules applicable to requests for changes in rates or fees, shall instead be considered pursuant to the rules applicable to Negotiated Service Agreements. The proposed sentence states: ''For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to Negotiated Service Agreements, Subpart L, supersede the otherwise applicable rules of this subpart.''

The Postal Service contends that the reference to ''this subpart'' is somewhat ambiguous, and should be changed to specifically identify the referenced subpart as ''subpart B.'' Postal Service at 26–27.

Although the Postal Service's suggestion may add clarity to the proposed rule, it does not conform to the existing drafting conventions for material that will be published in the Code of Federal Regulations. The final rule shall reference ''this subpart'' as originally proposed.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule, § 3001.61 Applicability

Section 3001.61, which is currently in effect, governs the applicability of rules for requests to change the mail classification schedule. The rulemaking proposes to add a sentence to § 3001.61 which specifies that a request based on a Negotiated Service Agreement, which otherwise would be considered pursuant to the rules applicable to requests for establishing or changing the mail classification schedule, shall instead be considered pursuant to the rules applicable to Negotiated Service Agreements. The proposed sentence states: ''For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to Negotiated Service Agreements, Subpart L, supersede the otherwise applicable rules of this subpart.''

The Postal Service contends that the reference to ''this subpart'' is somewhat ambiguous, and should be changed to specifically identify the referenced subpart as ''subpart C.'' Ibid.

Although the Postal Service's suggestion may add clarity to the proposed rule, it does not conform to the existing drafting conventions for material that will be published in the Code of Federal Regulations. The final rule shall reference ''this subpart'' as originally proposed.

Subpart L—Rules Applicable to Negotiated Service Agreements, § 3001.190 Applicability

Subsection (a) establishes that the rules proposed under subpart L are applicable to Postal Service requests based on Negotiated Service Agreements. The last sentence of proposed subsection (a) states: ''The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements, and except where specifically noted, do not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates or mail classifications.''

OCA suggests a stylistic change, which proposes to separate the last sentence into two separate sentences as follows: ''The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements. Except where specifically noted, this subpart does not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates or mail classifications.'' OCA at 6.

OCA's suggestion is an acceptable alternative, and may improve clarity. The Commission also has become aware that the proposed sentence references ''changes in rates or mail classifications,'' but omits any reference to ''fees.'' Correction of this oversight, along with the OCA's proposed modification, shall appear in the final rule. The last sentence of subsection (a) will state: ''The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements. Except where specifically noted, this subpart does not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates, fees, or mail classifications.''

Subsection (b) states in part that ''it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace.''

OCA proposes to expand these policy considerations by requiring: ''It shall be the policy of the Commission to recommend Negotiated Service Agreements each of whose elements are consistent with statutory criteria, unambiguously benefit the Postal Service, and do not cause unreasonable harm to the marketplace.'' OCA wants to ensure that a proposed Negotiated Service Agreement, ''in whole and in part, materially improves the financial condition of the Postal Service.'' Id. at 6–10. The OCA asserts that the requirement for each element to unambiguously benefit the Postal Service will help overcome any uncertainty in Postal Service estimates and any transaction costs associated with implementing the agreement.[8]

The Postal Service contends that the benefits of a Negotiated Service Agreement need to be considered as a whole. It objects to the OCA's proposal because requiring each element to benefit the Postal Service would bar Negotiated Service Agreements that are on balance beneficial to the Postal Service just because one element in isolation is not beneficial. Postal Service Reply at 4–6.

The Commission anticipates that negotiating a multi-element Negotiated Service Agreement will involve some give and take for the parties to reach agreement. Requiring each element to benefit the Postal Service could hinder this give and take process, and eliminate many possible arrangements from consideration. The Commission will review each element of an agreement, and integrate each element into a review of the agreement as a whole. The overall agreement must benefit the Postal Service. An individual element that does not benefit the Postal Service or that represents a high risk may receive added attention, and potentially could prevent a positive Commission recommendation. However, the OCA's policy proposal to require at the outset every element to benefit the Postal Service, without looking at the element's relationship to the overall

[8] The proposal also is consistent with the OCA's stated preference to not recommend revenue neutral Negotiated Service Agreements. OCA at 3–4.

agreement, is too restrictive. It will not be incorporated into the final rule.

OCA proposes an additional policy requirement related to declining-block rates which states: ''It shall be the policy of the Commission to require declining-block rates to be supported by a company-specific demand analysis justifying each volume threshold and corresponding rate.'' OCA at 6.

The Postal Service objects to the addition of this requirement because it would amount to a bar on declining-block arrangements. The Postal Service asserts that it is unlikely that a company-specific demand analysis would be available, and if it were available it is unclear how it would be used to justify the thresholds and rates. Postal Service Reply at 7.

The Commission has proposed general rules designed to be applicable to a broad variety of potential Negotiated Service Agreements. It chooses not to include rules specific to only one type of agreement at this point in time. The Commission's preference is to allow the Postal Service flexibility in fashioning each request to provide, within general guidelines, the appropriate information under the circumstances. The Postal Service's requests will be litigated, and precedent will be developed to guide future requests. Participants are always free to challenge any aspect of the Postal Service's request during the proceeding, and ask for additional information.[9] The Commission will not adopt the declining-block rate policy proposal at this time.

Subsection (b) also states: ''Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration; * * * .''

NNA proposes an additional restriction which specifies that the Commission will not recommend a Negotiated Service Agreement if a general or niche classification change will achieve substantially similar effects upon the Postal Service's revenues or costs. NNA's concern is with the competitive effects that a Negotiated Service Agreement could have on the smaller competitors of the proponent receiving the benefits of a Negotiated Service Agreement. It contends that including a presumption in favor of a less restrictive classification, such as a niche classification, is one possible protection that might be offered. NNA would modify the last sentence of subsection (b) to state: ''Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration or if a general or niche classification change will achieve substantially similar effects upon the Postal Service's revenues or costs; * * * .'' NNA at 4–6 (emphasis omitted).

Valpak, NAA, and UPS support the NNA position on general or niche classifications. Valpak Reply at 8; NAA Reply at 6–7; UPS Reply at 7. NAA also offers a suggestion that the Commission adopt a presumption that if a baseline Negotiated Service Agreement is premised on worksharing, then a niche classification is preferable.

The Postal Service is opposed to the NNA proposal, which essentially requires it to prove that a niche classification would not be an equally reasonable approach. Postal Service Reply at 7–8. The Postal Service contends that the Commission has already rejected this approach. See PRC Op. MC2002–2 at 33–34.

The Commission supports the basic premise that, all other things being equal, more inclusive mail classifications are preferable to more restrictive alternatives, and has maintained a consistent policy of entertaining and acting upon claims that new mail classifications should be available on more inclusive terms than were originally proposed. However, the Commission's preference for more inclusive mail classifications does not reach the level of a presumption that must be overcome by the proponents of single mailer agreements.

The rules as proposed already require the Postal Service to provide a written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification, § 3001.195(a). This requires the Postal Service to explain why a Negotiated Service Agreement is the preferable classification. It does not require the Postal Service to prove (what amounts to a negative) that a more inclusive classification could not be implemented, or is otherwise not appropriate. Recognizing foremost that the Postal Service is burdened with demonstrating that the proposed Negotiated Service Agreement complies with the requirements of the Act, it is not reasonable to impose this additional burden on the Postal Service. If the Postal Service provides a persuasive justification pursuant to § 3001.195(a), the Commission may find that the Postal Service has selected the appropriate classification. Participants are free to challenge this issue during the course of the proceeding.

NNA also suggests that each docket contain a procedural opportunity for participants to petition the Commission to use the Commission's statutory authority, when appropriate, to initiate a separate niche classification. NNA at 4–6.

The Commission will not incorporate an explicit procedural mechanism for participants to petition the Commission requesting that the Commission employ its statutory authority to initiate a separate niche classification. Participants are free to petition the Commission at any time on this matter. Participants should keep in mind that where rates or fees are involved, the Commission typically is limited to recommending a shell classification. To progress beyond a shell classification, participants would require the support of the Postal Service.

Section 3001.191 Filing of Formal Requests

No substantive comments in opposition to proposed § 3001.191 have been received. Section 3001.191 shall be included in the final rule as originally proposed.

Section 3001.192 Filing of Prepared Direct Evidence

No substantive comments in opposition to proposed § 3001.192 have been received. Section 3001.192 shall be included in the final rule as originally proposed.

Section 3001.193 Contents of Formal Requests

Subsection (a)—General requirements. Subsection (a) in part establishes the requirement to request a waiver if information required to be submitted pursuant to § 3001.193 is (1) not available and cannot be made available without undue burden, or (2) is not required in light of the characteristics of the request. The request for waiver would be in the form of a motion.

DMA *et al.* propose that the Commission only require a satisfactory explanation, and not a waiver. The satisfactory explanation would end the inquiry into the necessity to provide the information, unless another party challenges the issue. If challenged, the burden of going forward would shift to the challenging party as is done under the experimental rules. DMA *et al.* argue that this would be less burdensome and still protect the rights of the challenging party. DMA *et al.* at 9–10.

[9] The OCA suggestion seems excessively restrictive, as rate cell-specific elasticities are not normally available in any Commission proceeding.

Pitney Bowes contends that the requirement to request a waiver will further dissuade mailers from pursuing Negotiated Service Agreements because there is no meaningful ability to determine whether or not a waiver will be granted when first negotiating and preparing a Negotiated Service Agreement. It suggests that where information is not needed in light of the nature of the request, § 3001.193(a)(3) should only require a certification stating this fact. Presumably, the inquiry into whether the information must be provided would end at this point, unless challenged. Pitney Bowes at 5–6.

UPS argues that only requiring a certification would effectively eliminate the Commission as a meaningful participant in the decision-making process. Thus, it is opposed to Pitney Bowes' proposal. UPS Reply at 2.

OCA contends that Negotiated Service Agreements are extraordinary arrangements requiring extraordinary justification. It asserts that all § 3001.193 filing requirements should be mandatory. OCA suggests deleting the special provisions on waivers, and alternatively relying on the general waiver provisions of § 3001.22. If these suggestions are not adopted, OCA requests clarification as to whether it is necessary to reserve one's right to challenge the potential absence of information when answering the request for waiver. It also requests clarification as to when a potential challenge would be permitted. OCA at 10–15.

The Postal Service is generally not opposed to the procedures in regard to unavailable or not required information. It is opposed to relying solely on the general waiver provisions of § 3001.22 as proposed by OCA, and it is specifically opposed to requiring a waiver where information is unavailable and unduly burdensome to produce. The Postal Service contends that requiring a waiver in this instance might amount to a daunting entry barrier, which may dissuade potential partners from negotiating. It might invite opposition to granting the waiver. It also might require a factual examination as to whether the information is unavailable and whether the burden of producing the information is undue. The Postal Service also notes that this requirement is not consistent with other seemingly parallel sections of the Commission's rules. For example, §§ 3001.54(a)(2) and 3001.64(a)(2) both require ''a statement explaining with particularity,'' and not ''a request for waiver.'' Accordingly, the Postal Service proposes that ''a request for waiver'' be replaced with ''a statement explaining with particularity,'' which would make this requirement consistent with other provisions of the Commission's rules.

The Postal Service is not opposed to a request for waiver where information is not required in light of the characteristics of the request. It argues that determining such relevance issues early in the proceeding is useful and will aid in the development of the record. Furthermore, the Postal Service does not oppose the burden shifting provisions of § 3001.193(a)(4), which similarly appear in other Commission rules. Postal Service Reply at 7–11.

The Commission included the requirement to request a waiver in §§ 3001.193(a)(2) and (a)(3) because of the emphasis placed on the desire for the Commission to expeditiously issue recommendations on requests predicated on Negotiated Service Agreements. Requiring waivers assures immediate focus on informational issues, and necessitates prompt resolution of any concerns early in the proceeding.

Section 3001.193(a)(2) concerns information that is not available and cannot be made available without undue burden. It applies to information presumed to be relevant to the proceeding. Requiring only ''a statement explaining with particularity'' does not expedite resolving issues that could be central to a Commission recommendation. It would necessitate additional motions practice and result in delay.[10] The Commission will retain the requirement to request a waiver in this instance.

Section 3001.193(a)(3) concerns information that is not required in light of the proceeding. This category of information is information that is presumed not relevant to the proceeding. The request for waiver in most instances should be straightforward. It is not anticipated that this process would cause unnecessary delay to the procedural schedule. In instances where the relevance of the information is challenged, it will benefit the schedule by resolving the issue early in the proceeding. Requiring a request for a waiver versus a mere ''certification'' also stresses the importance of promptly resolving issues given a goal of expeditiously issuing a recommendation. The Commission also will retain the requirement to request a waiver in this instance.

Parties are not required to reserve an objection to a Postal Service request for a waiver under §§ 3001.193(a)(2) or (3). If it is apparent that granting a waiver is not warranted, the Commission expects the party opposed to the waiver to file in opposition at the time the request for waiver is pending. In the instance where it only later becomes apparent that there is an issue involving information for which a waiver has been granted, § 3001.193(a)(4) sets the standard for contending that providing the information was in fact necessary. This contention must be raised by motion before the close of the record so that all parties have an opportunity to respond to the issue.

Pitney Bowes requests a clarification of whether available information, which is unduly burdensome to produce, should be considered unavailable for the purposes of § 3001.193(a)(2). Pitney Bowes at 5–6. The Commission would entertain the argument that available but burdensome to produce information is effectively unavailable. However, because this category of information is presumed relevant to the proceeding, a successful argument where the information is available would likely focus on limiting the scope of the information provided, or on providing a substitute form of the information.

The Postal Service proposes the elimination of §§ 3001.193(2)(iii) and (v) in regard to a request for a waiver where information is not available and cannot be made available without undue burden. These sections require a request for waiver to include discussion of ''[t]he steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefore'' and ''[w]hether sufficiently reliable estimates are available to mitigate the need for such information, and if so, the specifics of such estimates.'' The Postal Service contends that these requirements invite unnecessary litigation directed at the sufficiency of the response, which could prolong the proceeding. Discover supports the Postal Service's position. Discover Reply at 2–3.

The implication in § 3001.193(2) is that the required information is ''relevant'' to the proceeding. Because it is relevant to the proceeding, if the information cannot be produced the Commission requires certain information to weigh its relevance, to determine whether the information could be produced in the future, and if not, to determine whether a suitable substitute can be provided. If the Commission finds the unavailable information highly relevant with little hope of future production and without a reasonable substitute, the unavailability of the information could

[10] Participants considering the ''statement'' inadequate would file motions at a subsequent stage of the proceeding, which could not be resolved prior to additional pleadings.

be important in the Commission's review of the Postal Service's request. Therefore, it is reasonable for the Commission to inquire about the time, and effort, involved in making the information available, and about the possibility of substitute information in order to avoid a negative outcome. Once identified, a potential filing deficiency in regard to presumed relevant information should be resolved as promptly as possible because it could have a direct effect on the outcome of the proceeding. Sections 3001.193(2)(iii) and (v) provide important information for resolving this issue, and thus, shall remain in the final rule.

The Postal Service suggests an editorial change to replace the word ''schedule'' in § 3001.193(a)(1) with ''schedule(s)'' to reflect the fact that the DMCS is made up of more than one schedule. The Commission shall incorporate this suggestion into the final rule.

Subsection (b)—Negotiated Service Agreement

Subsection (b) requires the Postal Service to include a copy of the Negotiated Service Agreement with its request. Comments were directed at the Commission's position that an unsigned text copy of the agreement will meet this filing requirement, the Commission's role in reviewing the agreement, public disclosure of the agreement, and the broader issue of potential public disclosure of sensitive information.

PostCom proposes that the Commission require the Postal Service to file a *signed* copy of the Negotiated Service Agreement with the request. PostCom argues that a *signed* agreement is required to avoid the expenditure of energy on an approval process where the parties are free to walk away during the approval process because they are not bound by an executed agreement. PostCom at 4–5.

As the Postal Service correctly interprets the Commission's intention, the Commission expects that requests will be based on executed Negotiated Service Agreements. Postal Service Reply at 5–6, fn. 4. The proponents would be at the greatest risk of expending energy if they choose not to proceed with the agreement. This alone should act as a deterrent to filing a request with no intent of carrying out the terms and conditions of an agreement. The Postal Service also properly points out that not requiring a signature is partially based on the requirements of the Commission's electronic filing system and the inconvenience of creating pdf files containing signatures. The Commission is not persuaded that the filing of a signed copy of the agreement is required, or that requiring a signature will or should act as a deterrent to a party's decision not to proceed once the review process begins.

The Commission reasoned that filing an unsigned text file copy of the agreement is sufficient because: ''the agreement does not go into effect until after the Commission submits its opinion and recommended decision, and the Governors of the United States Postal Service provide its approval.'' PRC Order No. 1383 (August 27, 2003) at 9. The Postal Service is correct in pointing out that the Commission is speaking to the provisions of the agreement that are under review by the Commission. The agreement might include other provisions, which become binding upon the signature of the parties to the agreement. Postal Service Reply at 5–6, fn. 4.

NAA contends that the copy of the agreement filed with the request should be signed, but only to assure that the version of the contract being filed is in fact the correct version, and not an earlier draft. NAA Reply at 4.

Under the Commission's rules, the filing party has the obligation to assure that the proper documents are filed. *See* § 3001.11(e). The Commission is not persuaded that requiring the copy of the Negotiated Service Agreement to be signed would offer anything more than a minimal improvement to assure that the correct version of a document is filed.

PostCom contends that requiring the filing of a signed contract would bring the Commission's proceeding closer to an ''after the fact'' review as suggested by the President's Commission. PostCom at 4–5; see also, Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service, Report of the President's Commission on the United States Postal Service, July 31, 2003 at 88–89, 174.

Current law requires a more pro-active role for the Commission that goes beyond an ''after the fact review.'' The Commission's role is to protect the public interest by bringing to light potential problems ''before'' the Postal Service proceeds with a new rate, fee, or classification. The Commission's statutory responsibility is foremost to review Postal Service requests for compliance with the requirements of the Act, and to issue a recommended decision on its findings. Through the Commission's recommendations, the Commission also provides the Governors of the United States Postal Service with an independent review of proposals put forth by the Postal Service. This independent review, which may incorporate additional views solicited from interested participants either through written comment or the hearing process, is used to inform the Governors in their decision-making process. Mailers in general further benefit because the transparency provided through the overall process adds to a better understanding of the Postal Service. The Commission's role in reviewing Postal Service requests is much broader than implied by PostCom.

Discover suggests that the final rules state that the Commission will not redraw the contract or rebalance the benefits and risks of the agreement. It further contends that the Commission's review should not include ensuring that the Postal Service has reached the best deal possible in the manner most appropriate. Discover at 5.

PostCom views the Commission's role as limited to ensuring the agreement is in compliance with the Act, and providing approval in the shortest time possible. PostCom's comments otherwise generally parallel the comments of Discover. PostCom at 4–5.

The Commission has no intent of acting as a bargaining party, or is its interest in renegotiating the terms and conditions of a Negotiated Service Agreement. However, the Commission's role is not so limited as to only providing either a positive or negative recommendation. For example, if the initial request does not support an agreement that complies with the requirements of the Act, the Commission might, if possible, recommend modifications to the agreement to bring it into compliance. Another example is in the area of data collection. The Commission frequently recommends changes such that the Commission will have access to information for performing future statutory functions.

Nor does the Commission view its role as ensuring that the Postal Service has made the best possible deal. However, the Commission will express its views and suggest (as opposed to recommend) potential changes such that the Postal Service is informed of the Commission's opinion when entering into future agreements. These same views and suggestions are also meant to independently inform the Governors in their decision-making process when considering the current agreement.

Final positive Commission recommendations are frequently conditioned on implementation of the Commission's recommended modifications. It would cause considerably more delay and waste of

resources if the Commission were restricted to recommending either a positive or negative recommendation. A negative recommendation then would require the Postal Service to file a new request and start anew. After the Commission issues its final recommendations, the proponents are free to accept the Commission's recommendations, or abandon the agreement. The Postal Service has exhibited sufficient proficiency in drafting its agreements to allow parties to opt out of the agreement if they choose not to accept the Commission's recommended modifications.

First Data is concerned about the Commission's indication that the actual text of the agreement will be made publicly available, and that the Commission will impose a high burden before granting a request for protective conditions on the contract itself. It contends that a Negotiated Service Agreement which involves changes in a mailer's operating practices is likely to require understandings on sensitive operational details. This could raise issues of the information being competitively sensitive, and of concerns about the physical security of the mail and the employees who handle it. First Data proposes that the Commission adopt a rule specifying that contractual terms specifying operational arrangements whose disclosure could jeopardize the safety of persons or property be redacted from public disclosure, and subject to protective conditions. In general, First Data suggests that the Commission not adopt a presumption in favor of general disclosure, and resolve these issues on a case-by-case basis. First Data at 5–7. Pitney Bowes expresses similar concerns that the proposed rules may not sufficiently protect the confidentiality of certain contract information. Pitney Bowes at 7.

NAA argues in favor of public disclosure of the text of the contract. It contends that this will facilitate evaluation of the agreement, and will help mailers determine whether they might be eligible for a functionally equivalent agreement. NAA is concerned over the negative connotations of keeping an agreement secret. NAA Reply at 4–5.

The Postal Service contends that the Commission's indication of a higher burden may be required to justify confidential treatment of the actual contract is not well advised and may be unnecessary. It asserts that other agencies have been able to come up with the proper balance as discussed in First Data's comments at 5–7.[11] Postal Service Reply at 13–15.

The Commission's intent is to make the actual contract publicly available on the Commission's web site in accordance with the general policy for documents filed at the Commission. The Commission has alerted the parties to the contract that any request for protective conditions placed on the contract itself will have to meet a high burden before being granted. *See* PRC Order No. 1383 (August 27, 2003) at 9.

The general rule at the Commission has been and remains that requests for protective conditions must meet a high burden.[12] Reminding participants of the general rule serves several purposes. Drafting an agreement in a fashion that does not require protective conditions is procedurally expedient. It does not require the additional step of requesting protective conditions, interested parties do not have to apply to view the material, and the overall proceeding is facilitated by being able to openly discuss, reference, and write about the subject material. Public disclosure also provides transparency, which helps curtail arguments of discrimination and secret dealings. Public disclosure also provides mailers with the information necessary to decide whether they wish to seek similar agreements with the Postal Service. The Commission will adhere to its preference, and presumption, that the contents of the actual contract shall be made publicly available. The application of protective conditions remains an option, but the negative effects of applying protective conditions must be recognized.

Several comments broaden the discussion of public disclosure of the terms and conditions of the contract to a discussion of the general disclosure of sensitive and confidential business data used to support the request during the course of the proceeding. Discover contends that private-sector firms must not be expected to reveal confidential business information in order to participate. Discover at 2, 6–7. It foresees that the more the Commission delves into mailer-specific data, the more likely the Commission will be faced with litigants whose main purpose is to uncover or gain access to a competitor's propriety information. Discover Reply at 4. Discover urges the Commission not to create the situation where a mailer seeking a functionally equivalent agreement must disclose confidential information, even if its competitor disclosed the same information in a baseline proceeding. In a related matter, Discover suggests the information collected through data collection plans also could raise competitive concerns. Id. at 6–7. MMA urges the Commission to assure mailers that they will not be required to disclose highly confidential business information because this possibility might dissuade mailers from seeking Negotiated Service Agreements. MMA at 6.

The Postal Service contends that the issue of confidentiality of mailer-specific information potentially presents a serious problem. It argues that the lack of procedural guarantees may become an impediment to exploring and developing beneficial Negotiated Service Agreements in the future. The Postal Service notes that the Commission was faced with similar problems in formulating rules for international services. It suggests that this issue be revisited in a subsequent rulemaking that could focus on specific solutions. Postal Service Reply at 13–15.

The Commission has well-established policies for protecting sensitive information, and has not been persuaded that reviewing Negotiated Service Agreements require any changes to those policies. Protective conditions, where appropriate, remain an option to prevent public disclosure of sensitive information. At the same time, the Commission has a statutory role to fulfill in reviewing Postal Service requests predicated on Negotiated Service Agreements. If sensitive co-proponent information is relevant to the Commission's review of a specific request, then the co-proponent should anticipate that this information will have to be disclosed in some form for the Commission to execute its review. The cooperation of the proponents of an agreement is expected, and it is required for the Commission to effectively carry out its statutory duties.[13] Negotiated Service Agreements are optional voluntary agreements that can mutually benefit mailers and the Postal Service by capitalizing on mailer-specific characteristics. There is no right or guarantee that any mailer will obtain a mailer-specific Negotiated Service Agreement. The standard rates, fees, and classifications remain available for universal application. Thus, part of the

[11] First Data generally discusses the procedures used by the Surface Transportation Board.

[12] The Postal Service's characterization that the Commission is imposing a higher burden than normal is not accurate.

[13] In Docket No. MC2002–2, co-proponent Capital One was extremely cooperative in providing important information while identifying certain business plans it viewed as extremely confidential. The Commission was able to perform its function without the production of any of this confidential information.

''cost'' of obtaining the special benefits associated with a Negotiated Service Agreement is participation in the review process, and the potential to have to disclose information relevant to the proceeding.

Subsection (c)—Rates and Standards Information

Proposed subsection (c) requires in part that the Postal Service provide a statement describing and explaining the proposed changes to the Domestic Mail Classification Schedule and any associated rate schedule. The Postal Service alerts the Commission to the fact that there are fee schedules in addition to the referenced rate schedules. Postal Service at 28. The Commission will correct this omission in the final rule by changing the words ''rate schedule'' to ''rate or fee schedule.'' Section 3001.193(c) shall be modified to state: ''Every formal request shall include a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate or fee schedule.''

Subsection (d)—Description of Agreement

No substantive comments in opposition to proposed § 3001.193(d) have been received. Section 3001.193(d) shall be included in the final rule as originally proposed.

Subsection (e)—Financial Analysis

Subsection (e) requires every formal request to include an analysis of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues. Comments are fairly balanced between parties considering the specific requirements too onerous, and parties arguing in support of the proposed rule. The Postal Service contends that the rule generally solicits information necessary to explain and justify the financial components of a Negotiated Service Agreement, but has concerns over the rule's structure. Several parties also provide detailed suggestions for improving particular requirements of subsection (e).

Capital One foresees several problems in complying with the proposed rule. It contends that in general mailer specific costs are not known. It questions the reliability of mailer-specific elasticities and their projection over a three-year period. It argues that obtaining mailer-specific volumes over the possible three years of an agreement is just wishful thinking. Furthermore, it foresees frequent use of waivers claiming that information is unavailable and cannot be produced without undue burden. Alternatively, Capital One favors adapting the rules for experimental requests for use with requests predicated on Negotiated Service Agreements. It argues that there is no reason to believe that future Negotiated Service Agreements will have any greater impact or be more complex than the typical experimental case. Capital One at 3–7.

DMA *et al.* contend that the proposed rules ''are so burdensome and broad that * * * they would deter most from seeking NSAs and substantially increase the costs of obtaining NSAs to those who might be willing to go forward.'' It suggests, as a procedural alternative, that the Postal Service only be required to prove that a Negotiated Service Agreement improves the Postal Service's financial position, and require sufficient data to prove this point. It further argues for the adoption of rules analogous to the rules governing experimental classifications. DMA *et al.* are particularly troubled over the requirements to analyze costs, revenues and volumes over the life of the agreement versus just a test year, the use of mailer-specific costs, volumes, and elasticities, and certain aspects of providing a response in regard to contribution. DMA *et al.* further discuss the difficulty of developing estimates and the difficulty of defending estimates without disclosing a significant amount of proprietary information. DMA *et al.* at 6–8.

Discover considers the DMA et al. comments as instructive, and believes that even the Postal Service's proposals (discussed below) are too rigid. It suggests that the level of detail specifying evidentiary support should not be written into stone at this time. Discover proposes the rule should just require that '''[e]very formal request shall include a sufficient analysis of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues * * *.' '' It argues that the details of each Negotiated Service Agreement could then dictate the type and level of financial analysis required. Discover Reply at 5.

First Data interprets the rule as establishing a rebuttable presumption which requires the presentation of data quantifying the additional mail volume potentially generated by the Negotiated Service Agreement, and the associated elasticity factors. It contends that volume and elasticity studies of this kind are time consuming and costly to generate. It argues that such data may be appropriate for some Negotiated Service Agreements (such as the Capital One agreement), but may not be appropriate for others. First Data further requests clarification ''that detailed volume and elasticity studies will not be required for proposed volume discounts that equal a uniform percentage of anticipated cost savings per piece.''[14] First Data at 2–3.

MMA's concern is with the requirements for mailer-specific information. It requests clarification that the Commission is interested in the costs incurred by the Postal Service for handling the specific mailer's mail, and not the costs incurred by the mailer to prepare the mail (for example, the mailer's cost of preparing workshare type mail). It also requests clarification that a mailer is not required to provide mailer-specific information or develop mailer-specific elasticity factors unless such information is relevant to the Commission's review. MMA at 5–6.

Pitney Bowes also interprets § 3001.193(e) as creating a presumption that mailer-specific cost, volume, revenue, and elasticity information will be required, notwithstanding that such data and information may not be important for every agreement. It requests clarification that there is no presumption for extensive mailer-specific information for every request predicated on a Negotiated Service Agreement. It also requests an express provision in the rules stating that data is not required where the proponents present a plausible explanation that the effects to be measured by the information would be *de minimis.* Pitney Bowes at 4–5.

PostCom interprets § 3001.193(e) as contemplating that a Negotiated Service Agreement cannot be approved in the absence of mailer-specific information. It contends that this would be an unacceptable standard. It argues that few, if any, mailers collect, or retain, mailer-specific information at the level of detail that the Postal Service does on a system-wide basis. PostCom proposes changes to § 3001.193(e)(5) to stress that the focus is on the costs to the Postal Service. It further uses the terminology ''to the extent practical'' presumably to allow for the use of proxies for mailer-specific information when it is unavailable. PostCom's proposal states:

> Include an analysis which sets forth, to the extent practical, estimated mailer-specific costs to the Postal Service and the estimated volumes and revenues which will result from implementation of the Negotiated Service

[14] The Commission's analysis is not limited to analyzing the benefit to the Postal Service on a per piece basis. In most instances, volume information will be necessary to determine the agreement's aggregate effect on the overall finances of the Postal Service. Thus, the Commission can not adopt First Data's proposal.

Agreement; PostCom at 6–7. PostCom also proposes complementary changes to §§ 3001.193(e)(6)–(8).

The Postal Service supports PostCom's proposal to modify §§ 3001.193(e)(5)–(8), and has incorporated the essence of PostCom's proposal into its revised proposal. The Postal Service contends that these modifications streamline the structure of the rule and remove certain redundancies. Postal Service Reply at 15–16.

Valpak contends that the rules in regard to requiring mailer-specific cost information are reasonable and necessary. It asserts the relevant issue is the necessity to obtain reliable cost estimates on which the Commission can base its rate recommendations. It dismisses some commentary provided by other parties as arguing it is impractical to require the Postal Service to meet virtually any burden to obtain a desired change in rates. Valpak's comments provide examples discussing the importance of good proxies and mailer-specific costs.

In regard to PostCom's proposal to focus on Postal Service costs, Valpak does not object to the rewording of § 3001.193(e)(5). However, it contends that PostCom's implication that the proposed rule requires anything other than Postal Service costs is rather stretched. Valpak also objects to the addition of the phrase ''to the extent practical.'' It argues that this could vitiate the rule, potentially acting as a permanent waiver. Valpak Reply at 1–5.

NAA contends that since the Postal Service does not have residual claimants to answer to if it enters into unwise deals, it is more important, not less, to understand the costs of what it is committing to. It is dismissive of other comments paying ''lip service'' to the concept that mailer-specific data is desirable, but that actually obtaining such data generally would be too difficult. It remains unconvinced of the Postal Service's position, which it summarizes as mailer-specific costs are unknowable, but average costs should usually suffice. NAA contends that private regulated carriers routinely engage in such cost analysis. NAA Reply at 5–7. NAA also supports requiring the financial analysis to be considered over the life of the agreement stating: ''If the Postal Service truly cannot arrive at a reasonably realistic assessment, taking into account all pertinent considerations, whether a particular deal would raise or lower contribution, it should not enter the agreement.'' *Id.* at 7–8.

UPS views the gathering of mailer-specific information as the cost of offering mailer-specific rates, the absence of which draws into question the very concept of Negotiated Service Agreements. It asserts that ''large'' mailers are urging the Commission to abandon attempts to obtain mailer-specific costs and other information, but they do not contend that such information is not relevant to the proceeding. Generally, UPS supports the mailer-specific information requirements. UPS Reply at 3–4. UPS also supports the multi-year financial analysis proposed by the rules. *Id.* at 4–7.

The Commission assumes that the negotiators and the decision-makers involved with entering into Negotiated Service Agreements require a certain level of information in order to exercise appropriate business judgement. Where information is unavailable that is necessary to exercise this judgement, the Commission expects the expenditure of some level of effort to gather the required information. In most instances, the information sought by the Commission is the minimum information that should be under consideration during the negotiation and decision-making process. The Commission requires this information in order to carry out its statutory functions. Thus, the Commission is not persuaded by arguments that the rules impose too high of a burden, or that it is unreasonable to ask proponents to gather information required to justify any one particular request.

Requests predicated on Negotiated Service Agreements are not requests for experimental classifications. The purpose of an experimental classification is for the Postal Service to learn something. Experimental rules anticipate that certain information might not be available because a purpose of the experiment might be to gather that information. The existence of these rules does not prevent the Postal Service from filing requests for experimental authority to test potentially beneficial arrangements.

Nor are requests predicated on Negotiated Service Agreements the same as a request in an omnibus rate case. The rules for an omnibus rate case allow for a wide spectrum of material with its associated levels of uncertainty that potentially could effect postal services for an unknown period of time. Because of these and other characteristics, a test year approach is appropriate for an omnibus rate case. In contrast, Negotiated Service Agreements are limited in both scope and duration. The Postal Service should not be entering into a Negotiated Service Agreement unless it has good reason to believe the agreement benefits the Postal Service. Because of limited scope and duration, and the requirement to benefit the Postal Service, it appears reasonable to assume that the proponents of an agreement should and could have a high level of understanding as to the bases of that agreement. Without this understanding, it might be unwise to continue considering such an agreement. Because of the characteristics of Negotiated Service Agreements, compared with the characteristics of experimental and omnibus rate cases, the Commission believes that the financial analysis rule is appropriate under the circumstances, and is not unduly burdensome.

The Commission is not persuaded by the argument that because a Negotiated Service Agreement typically might not have a substantial effect on the finances of the Postal Service, the less burdensome rules for experimental classifications might be more appropriate. While it might be true that any one Negotiated Service Agreement may have little effect on overall Postal Service finances, there has been an indication that many parties are interested in pursuing Negotiated Service Agreements. Assuming that multiple Negotiated Service Agreements are approved, the Commission has concern that the cumulative effects of multiple agreements could have an appreciable effect on Postal Service finances, and will have a further effect on the analysis of any future omnibus rate case. This makes it important to appropriately review every request predicated on a Negotiated Service Agreement.

There does not appear to be any suggestion that the information that the rules require is not relevant. Most of the commentary is on the burden imposed with gathering information, the difficulties in obtaining mailer-specific information, or in making projections into the future. The Commission requires information relevant to analyzing a request over the proposed duration of the agreement. If information is unavailable over the duration of the agreement, this analysis cannot be accomplished, and the agreement cannot be reviewed for compliance with the requirements of the Act. Proponents have the option of requesting shorter duration agreements, if that is all that can be justified given the available information.

The clarifications suggested by MMA are appropriate. For example, where discussion focuses on ''mailer-specific costs,'' the concern is with costs incurred by the Postal Service to handle the mail of the specific mailer.

Furthermore, if an element of analysis, such as mailer-specific elasticity factors, is not relevant to the Commission's review of a specific request, it need not be developed.

The financial analysis rule as proposed provides the Postal Service with considerable latitude to appropriately formulate its response to the characteristics of the particular request. Because of this inherent flexibility, the Commission will apply the rule of reason in interpreting compliance with the rule. The Postal Service is sufficiently sophisticated to know generally what information is relevant, and must be submitted, and what is not relevant and need not be submitted. Thus, the Commission is not persuaded that the rules will result in the submission of substantial amounts of information not relevant to the analysis of the request.

The Commission requires certain information in order to carry out its statutory duties. It is not persuaded that it is imposing an unfair burden on any proponent by requiring that this information be provided. Negotiated Service Agreements provide participating mailers with benefits that are not available to other mailers in general. The requirement to substantiate a request for a Negotiated Service Agreement is part of the cost of receiving those benefits. The Commission believes that the rules strike the right balance to provide the Commission with the information necessary to review the request, without unduly burdening the proponents of the agreement.

The Postal Service supports § 3002.193(e) in that the requirements ''appear to be intended to elicit a workable set of materials that should be sufficient to explain and justify the financial components of a proposed NSA.'' Nevertheless, the Postal Service has concerns over the structure of the requirement, and over a few of its provisions. Postal Service at 6–14.

The Postal Service does not oppose (even though it is not convinced that it is the preferred approach) a multi-year financial analysis versus a test year financial analysis to analyze the financial effects of a Negotiated Service Agreement. It argues that the scope and reliability of estimates might not be consistent when going from the first year of an agreement to the subsequent years. From its Capital One experience, it asserts it found difficulty in obtaining a one-year forecast. Thus, it contends that projecting a forecast over multiple years would present serious challenges.

To cope with these challenges, the Postal Service proposes a restructuring of subsection (e).[15] Subsection (e) would be subdivided into two subdivisions. The first subdivision would focus on the first year of the agreement and essentially provide the same information as proposed in the Commission's rule. The second subdivision would continue to require a yearly financial analysis for the subsequent years. However, the focus in the subsequent years would shift to analyzing identifiable changes from the first year, rather than to build a separate analysis for each subsequent year from the ground up. The Postal Service would first identify factors that ''might'' cause the relevant elements of the analysis to differ materially from the corresponding elements in the first year. The potential effects of each factor would then be examined and quantified. Finally, the projected effects of all such factors would be aggregated into a restated financial analysis for each component of the agreement. The intent of the Postal Service's proposal is to better align the rule with what it views as the reality of the significant limitation on the amount and quality of information available past the first year of the agreement.

The Postal Service also has concerns in regard to the mailer-specific cost provisions of the rule. It reiterates its past position that determining ''mailer-specific costs in all but the most extraordinary circumstances would be nigh impossible.'' It asserts that generally speaking it cannot hope to trace any particular customer's mail through the postal system. Given these concerns, however, the Postal Service believes that subsection (e) as proposed will provide it with the necessary latitude to structure its financial analysis, without the necessity to resort to routine requests for waivers. It acknowledges the importance of using the most accurate costs available, and does not intend to use, for example, subclass averages where it does not believe that will do a good job of estimating true costs. Finally, the Postal Service recognizes that special studies may be appropriate in some instances.

The Commission compliments the Postal Service for its well-reasoned commentary, analysis and proposals in regard to the proposed financial analysis rule. The Commission shares many of the Postal Service's observations and concerns in drafting rules applicable to a basically uncharted territory. Either the Commission's approach or the Postal Service's alternative approach could form the basis of a rule to analyze the financial consequences of a multi-year Negotiated Service Agreement. The two approaches substantially coincide for the first year of any agreement. For the potential second and third years of an agreement, the differences appear more philosophical than substantive.

The Postal Service's approach potentially has one time savings advantage. It should present, up-front, potential changes to the financial analysis that might occur beyond the first year without requiring the Commission or interested parties to discover this information on their own. This could reduce the time necessary for analyzing a Postal Service request. The risk is that the Postal Service could apply a loose standard to interpreting what factors ''might'' cause the relevant elements of the analysis to differ ''materially'' from the corresponding elements in the first year, which would negate any benefit.

The Commission shall adopt the Postal Service's approach as proposed in its initial comments. This decision is substantially based on the slight advantage inherent in the Postal Service's approach. Both the Commission's approach and the Postal Service's approach, if properly applied, have the potential to provide the Commission with the information necessary to make an informed recommendation. If the Postal Service's approach proves inadequate, the Commission has the option of revisiting these provisions at a later time.

The Commission recognizes as valid many of the concerns raised by the Postal Service, and other intervenors. The rule requires the estimation of future events. It is a valid and acceptable argument that the farther out in time an estimation is made, the less certain the reliability of that estimation. The end effect will be that at a certain point in the future, the information becomes so unreliable that it is no longer of any use to justify a request. This might act to limit the duration of any proposed agreement. The Commission also accepts the Postal Service argument that it might not know every aspect of a mailer's costs. However, the Commission expects the Postal Service to know and understand mailer-specific costs where they have a bearing on a request. This is all part of analyzing the financial aspects of any proposed agreement.

[15] The Commission's comments and analysis are directed at the Postal Service proposal as it appears in its initial comments. Postal Service at Attachment 2–4. The Postal Service revises its initial proposal in its reply comments based on suggestions from other commentators. Postal Service Reply at Attachment 3–4. The suggestions of the other commentators incorporated by the Postal Service are addressed separately in this order.

Subsection (e)(3) requires the financial analysis to: ''Be prepared in sufficient detail to allow independent replication, including citation to all referenced material.'' OCA proposes to include a reference in subsection (e)(3) to the § 3001.193(h)(4) workpaper rules to make clear that the citation requirements of subsection (e)(3) are as stringent as the requirements for workpapers. OCA at 15. The Postal Service is opposed to this proposal because the requirement already requires the analysis to ''be prepared in sufficient detail to allow independent replication.'' Postal Service Reply at 16.

The Commission finds subsection (e)(3) acceptable as proposed, and is not persuaded that the OCA proposal suggests a necessary or desirable change.

Subsection (e)(4) requires the financial analysis to: ''Include an analysis, which sets forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for each year that the Negotiated Service Agreement is to be in effect assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement.'' Subsection (e)(5) requires the financial analysis to: ''Include an analysis which sets forth actual and estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the Negotiated Service Agreement.''

PostCom and OCA note that subsection (e)(4) requires ''estimated'' mailer-specific costs, volumes, and revenues, whereas subsection (e)(5) requires ''actual and estimated'' mailer-specific costs, volumes, and revenues. PostCom suggests deleting the requirement for ''actual'' information from subsection (e)(5) because much more commonly, the costs and volume data will be estimates. PostCom at 5. OCA proposes to make subsection (e)(4) and (e)(5) symmetrical by adding ''actual'' to subsection (e)(4). OCA at 15–16. The Postal Service endorses the approach taken by PostCom by noting that the ''availability of actual financial information for a future period seems equally unlikely in either scenario.'' Postal Service Reply at 15–16.

The Commission shall delete ''actual'' from subsection (e)(5). Both subsections (e)(4) and (e)(5) require the Postal Service to perform a prospective analysis of future events. The mailer-specific costs, volumes, and revenues might be known in the past, or at the present, but they would only be estimates in the future.[16]

Subsection (e)(6) requires the analysis to: ''Include a discussion of the effects of the Negotiated Service Agreement on contribution to the Postal Service (including consideration of the effect on contribution from mailers whom [sic] are not parties to the agreement).'' OCA proposes to require an ''analysis'' rather than a ''discussion.''[17] OCA at 16. The Postal Service does not support changing the terminology to ''analysis.'' It questions whether anything useful is gained by making the substitution, and contends that the term ''analysis'' might be misconstrued. Postal Service Reply at 16–17.

The Commission interprets OCA's concern as with the level of detail required to comply with this rule. Parties on their own should be able to determine the first order effects on contribution from the cost, volume, and revenue requirements of subsections (e)(4) and (e)(5). However, subsection (e)(6) is meant to emphasize the importance of the consideration of contribution to the overall recommendation, and alert the Postal Service that this issue warrants separate treatment. Subsection (e)(6) requires a quantitative as well as qualitative response. Because the word ''analysis'' may be interpreted as more inclusive, the Commission will accept the OCA proposal and change the word ''discussion'' to ''analysis'' in the final rule.

NNA proposes the addition of a requirement for all costs to be presented by cost segment in regard to worksharing type Negotiated Service Agreements. It argues that the purpose of this requirement is to allow small competitors and the Commission to better identify potential functionally equivalent arrangements. NNA at 6–7. In addition, NNA proposes to add a requirement to § 3001.193(e)(6) for the Postal Service to provide a plan demonstrating how it will make the individual features of a Negotiated Service Agreement available to mailers not party to the agreement. *Id.* at 7–8.

The Postal Service is opposed to the NNA proposal requiring estimated costs to be presented by cost segment. Given the purported purpose of enabling smaller mailers to identify potentially functionally equivalent arrangements, and the ability of the uninitiated to understand and utilize arcane cost segment data, the Postal Service cannot conceive how this information could benefit a small mailer. Thus, the Postal Service contends that the proposed requirement is unnecessary and burdensome. Postal Service Reply at 17–18.

In instances outside of omnibus rate cases, the Commission does not always require cost estimates to be presented by cost segment.[18] If this information becomes necessary to analyze a specific request, a participant or the Commission can request it separately. The Commission interprets NNA's goal as requiring the Postal Service to provide detailed information for examining the potential for developing new or functionally equivalent Negotiated Service Agreements, and not for analyzing the instant request. The inference is that picking and choosing desirable functional elements from a proposed multi-element Negotiated Service Agreement could be used to develop new Negotiated Service Agreements. While the Commission considers it a requirement that similarly situated mailers have the opportunity to obtain functionally equivalent Negotiated Service Agreements, dissecting an agreement for the purpose of developing and promoting future agreements is beyond what the Commission requires. It also is beyond what is necessary to evaluate the merits of any one Postal Service request.

OCA proposes the addition of a ninth requirement to subsection (e) which states: [the analysis shall] ''demonstrate that the impact of the Negotiated Service Agreement on the net present values of the Postal Service is significant and positive.'' The OCA asserts that this would insure that the time value of money is accounted for in estimating the effect of a Negotiated Service Agreement on Postal Service finances. OCA at 16. The Postal Service opposes the addition of this requirement as it adds far more needless complication than real substance. Postal Service Reply at 17.

The Commission concurs with the Postal Service. OCA fails to provide any persuasive explanation of how analyzing an effect on net present value, in light of all of the other informational requirements, would add further insight to the Commission's recommendations.

[16] This appears as § 3001.193(e)(1)(ii) after incorporation of the Postal Service's proposed restructuring of § 3001.193(e).

[17] OCA proposes a similar change to the last sentence of § 3001.193(e) which delineates the procedures to be followed when mailer-specific costs or elasticity factors are not available. Within the context of the last sentence of § 3001.193(e) [renumbered § 3001.193(e)(1)], it is appropriate to ''discuss'' the suitability of proposed proxies for cost or elasticity factors.

[18] However, this level of detail might become necessary when integrating the effects of a Negotiated Service Agreement into an omnibus rate case.

Subsection (f)—Impact Analysis

Subsection (f) requires the Postal Service to include an estimate of the impact of the Negotiated Service Agreement on: competitors of the parties to the Negotiated Service Agreement other than the Postal Service; competitors of the Postal Service; and mail users.

First Data contends that the requirements of subsection (f) are burdensome and suggests that the subsection be deleted. First Data at 3–5. MMA asserts that subsection (f) is burdensome, of questionable value, and also suggests that it should be deleted. MMA at 6. DMA *et al.* contend that subsection (f) is burdensome, and that the requirement is vague. DMA *et al.* at 11. Capital One objects to subsection (f) in general, and (f)(2) specifically. It contends that complying with the requirement would be an onerous task, and that the ''Panzar'' effects that this subsection arguably responds to are too remote for consideration. It also asserts that the Commission's obligation is to ensure that proposals promote rather than harm competition, and not to assess the benefit or harm to any particular competitor as Capital One argues is required by subsection (f)(2). Capital One at 6–7.

NAA emphatically supports analyzing the competitive effects of Negotiated Service Agreements. NAA Reply at 8–11. UPS argues that subsection (f) is supported by the factors of the Act and urges the rejection of proposals to eliminate this requirement from the rule. UPS Reply at 4. Valpak supports a broad analysis on the consequences that Negotiated Service Agreements have on third parties. Valpak at 8–11; Valpak Reply at 10–11. OCA opposes elimination of subsection (f). It argues that because the Commission must find that each Negotiated Service Agreement serves the public interest, it should insist that the Postal Service's filing contain what is essentially a social cost-benefit analysis. OCA Reply at 8–9.

The Postal Service's concern is with the potential burden imposed by subsection (f), and it questions whether the information required to comply with the requirement will even be available. It suggests that the Postal Service could first provide some analysis, but then the burden should shift to the competitors to raise competitive issues. The Postal Service implies that it should really just be reacting to third-party claims of competitive harm brought up in the proceeding. The Postal Service states that it ''would be willing to provide information with its filing concerning the competitive context in which the NSA takes place, and otherwise qualitatively demonstrate that it has considered such competitive effects prior to filing the NSA request.'' Postal Service at 15–19; Postal Service Reply at 18–20.

The Commission anticipates that the burden of complying with subsection (f) will vary considerably depending on the specifics of the Negotiated Service Agreement and the parties involved. The subsection is written using general language to allow the Postal Service the flexibility to formulate a response appropriate under the circumstances. The commentary on the rule fairly equally argues in support of and in opposition to the proposed rule. The rule addresses a difficult subject area. However, the information it requires is necessary for the Commission to analyze the request in relation to the requirements of the Act. It is particularly important for Negotiated Service Agreements involving mail subject to the Postal Service monopoly. The Commission will retain this rule in the final rules, but will be willing to entertain suggestions for future improvements after gaining further experience.

Several comments discuss whether it is appropriate for the Postal Service to have the initial burden of presenting competitive issues or whether third party competitors should be required to protect their own interest by intervening in the proceeding. First Data argues that the Commission should rely on the normal adversarial process for third parties to protect their interests. First Data at 3–5. MMA contends that the Commission should rely on intervention by third-party competitors to protect their own interests, and intervention by the OCA to represent the interests of the general public. MMA at 6. OCA supports the adversarial approach assuming that all adversely affected parties are of similar size and financial resources to the proponents of the Negotiated Service Agreement. However, OCA contends that if a large number of small firms were adversely affected, no single small firm would find it worthwhile to incur the costs of litigation, even if the aggregate negative effects of the Negotiated Service Agreement were large. OCA Reply at 8–9.

The Commission believes that the adversarial process, in most instances, is the preferred methodology of resolving issues before the Commission. This methodology is most efficient where adversaries possess comparable resources and knowledge. In this situation, parties can be presumed to have the responsibility to intervene in a proceeding if their interests are at stake.

However, requests predicated on Negotiated Service Agreements present a different situation to the Commission. Competitors of the proponent requesting a Negotiated Service Agreement cannot be presumed to have comparable resources and knowledge to intervene for the purpose of protecting their own interests. For example, the Capital One NSA experience showed very few competitors approaching Capital One's resources and knowledge. It is unreasonable to expect small businesses to be constantly aware of the potential impact of Negotiated Service Agreements filed with the Commission, and to be prepared to raise their concerns in the limited time frames established by these rules. This could leave multiple, similar small competitors not represented and unprotected when considering the aggregate effect of a Negotiated Service Agreement, especially since these cases are expected to proceed with expedited timetables. Thus, the Commission is not persuaded that total reliance on the adversarial system is consistent with its statutory obligations, or is in the best interest of all mailers or the postal system. Subsection (f) is intended to complement the adversarial process. Requiring the proponents of a Negotiated Service Agreement to initially analyze competitive issues and provide analysis to the Commission is a modest step in the direction of assuring an adequate record on this important issue.

The Commission considers it fair and equitable to place the initial burden on the Postal Service and its co-proponents. The Postal Service is likely to have greater access to information about mail markets and be better able to evaluate potential impacts than the vast majority of mailers who may be concerned about the possible impacts of a Negotiated Service Agreement. Its co-proponents are assumed to be in the industry that would be affected by the Negotiated Service Agreement, and should be knowledgeable about competitive issues within their own industry, and competitive relationships within the industry. Both the Postal Service and its co-proponents presumably have recently undertaken the negotiation process where many of these issues may have been considered. Thus, the Postal Service and its co-proponents are in a superior position to efficiently address this topic.

Providing information on the competitive issues of a Negotiated Service Agreement with the request also facilitates issuing a prompt decision.

Expediting the proceeding has been stressed in many of the comments. The Commission found it necessary to sponsor a witness to address certain issues when it evaluated the Capital One Negotiated Service Agreement. This was time consuming both from the aspect of providing time for the witness to develop the required testimony, and of providing time for interested parties to respond to the testimony. Assuring the availability of an analysis of impact on competition up front, with the request, appears to be a more efficient way to proceed.

Discover and Pitney Bowes suggest textual changes that could make compliance with the requirement less onerous. Discover proposes that the word ''discussion'' be used in place of the words ''analysis'' and ''estimate'' in subsection (f). It argues that most Negotiated Service Agreements only have limited impact on competition, providing there is rapid approval of functionally equivalent agreements. Thus, anything more than requiring a simple statement will only increase the transaction costs of the review process. Discover Reply at 5–6. Discover also suggests that the Commission distinguish between different types of Negotiated Service Agreements in setting requirements for analyzing the impact of a Negotiated Service Agreement. *Id.* at 7–8. Pitney Bowes suggests that subsection (f) only require the parties to ''consider'' competitive effects. It also suggests that extensive data or information is not necessary if competitors do not appear to oppose the Negotiated Service Agreement.[19] Pitney Bowes at 6–7.

The Commission shall not adopt suggestions only to require that proponents ''consider'' or ''discuss'' the effect of a Negotiated Service Agreement. The Commission considers the effects of a Negotiated Service Agreement to be an important issue requiring more than the implied limited discussion or consideration. A simple statement that the effects of the Negotiated Service Agreement have been considered, or a broad statement about competition in general will not suffice in providing the Commission with the information necessary to evaluate the effects of a Negotiated Service Agreement.

The Postal Service proposes to change the term ''estimate'' to ''analysis'' in subsection (f). Postal Service at 15–19.

The Commission interprets the Postal Service's intent as to require more of a qualitative than a quantitative response. The Commission expects an analysis to provide both quantitative and qualitative information, and thus will change the final rule to refer to an ''analysis.'' This could be revisited in a future rulemaking after the Commission and the Postal Service come to a better understanding, through experience, of what information might reasonably be presented.

Subsection (f) is written with inherent flexibility. The Commission tasks the Postal Service with using this flexibility to its advantage, and through the rule of reason, provide a response that is appropriate under the circumstances.

Subsection (g)—Data Collection Plan

Subsection (g) requires Postal Service requests to provide a proposal for a data collection plan. The Postal Service alerts the Commission to a typographical error in a reference to a subsection. Postal Service at 27–28. The Commission shall correct the typographical error by referencing the correct sections of renumbered § 3001.193(e) in the final rule.

OCA suggests an amendment to § 3001.193 to make clear that a proposed data collection plan is subject to change by the Commission. The OCA proposes to specifically state: ''The proposed data collection plan will be subject to amendment by the Commission in its recommended decision.'' OCA at 16.

The Commission has the right to task proponents with collecting data and performing analyses appropriate under the specific circumstances of any request. The data collection plan proposed in a request predicated on a Negotiated Service Agreement serves a different purpose, and is anticipated to be less burdensome, than a data collection plan appropriate for an experiment. *See* PRC Order No. 1383 (August 27, 2003) at 13. The data gathered and analysis performed is anticipated to be that which would be done anyway in the normal course of business to quantify the benefit to the Postal Service. The Commission does not find it necessary to adopt OCA's suggestion in the final rule.

Subsection (h)—Workpapers

No substantive comments in opposition to proposed § 3001.193(h) have been received. Section 3001.193(h) shall be included in the final rule as originally proposed.

Subsection (i)—Certification by Officials

No substantive comments in opposition to proposed § 3001.193(i) have been received. Section 3001.193(i) shall be included in the final rule as originally proposed.

Subsection (j)—Rejection of Requests

Subsection (j) provides that the Commission may reject any Postal Service request which patently fails to substantially comply with any requirements of the subpart (subpart L). Subsection (j) is modeled after identical language appearing in §§ 3001.54(s) and 3001.64(i).

The Postal Service reiterates its position expressed in rulemaking Docket No. RM80–1 in regard to rules 3001.54 and 3001.64 that rejection by the Commission of a Postal Service request made under §§ 3622 and 3623 falls outside the bounds of the Commission's lawful authority.[20] Further, the Postal Service preemptively rejects any argument that a rejection of a Postal Service request would affect the Postal Service's authority to impose temporary rate and classification changes under § 3641, and specifically requests that the provisions of § 3641 be cited in § 3001.195. Postal Service at 19–21, Attachment at 5.

The legal authority of the Commission to reject a Postal Service request that patently fails to substantially comply with filing requirements was litigated in Docket No. RM80–1, and comprehensively explained in PRC Order No. 354. The finding of legal authority was based on the holdings presented in *Municipal Light Boards of Reading and Wakefield Massachusetts* v. *Federal Power Commission,* 450 F.2d 1341 (D.C. Cir. 1971), which is still current law. The Postal Service has not produced any new argument that would persuade the Commission to alter its position. Therefore, subsection (j) shall remain as part of the final rule.[21]

[19] Pitney Bowes questions whether there is a distinction between analyzing the impact on mail users as a group and analyzing overall system contribution. In many instances, changes in contribution will be the major impact on users of the mail. In other instances, a Negotiated Service Agreement could have an impact for example on service standards, which could effect users of the mail. The Commission does not know what types of Negotiated Service Agreements that the Postal Service is contemplating. The specifics of a particular Negotiated Service Agreement will determine how the Postal Service chooses to comply with this requirement.

[20] See Docket No. RM80–1, Comments of the United States Postal Service in Response to Postal Rate Commission Notice of Proposed Rulemaking, March 12, 1980.

[21] The Commission acknowledges that § 3641 provides the Postal Service with the authority, under limited circumstances, to impose temporary changes in rates and fees. However, the Postal Service can only exercise this authority if it meets all of the requirements of § 3641. The Postal Service must consider the anticipated minimal financial effect of any one Negotiated Service Agreement on the ''total'' estimated costs and revenues of the Postal Service. See § 3641(b). The classification attached to the rate or a fee also would have to exist prior to the Postal Service imposing a temporary

Continued

Section 3001.194—Failure to Comply

No substantive comments in opposition to proposed § 3001.194 have been received. Section 3001.194 shall be included in the final rule as originally proposed.

Section 3001.195—Requests to Recommend a Baseline Negotiated Service Agreement

Section 3001.195 governs Postal Service requests for recommended decisions in regard to a baseline Negotiated Service Agreement. A baseline Negotiated Service agreement is not predicated on a functionally equivalent Negotiated Service Agreement that is currently in effect.

Subsection (a)(1) requires the Postal Service request to include a written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification.

NNA supports rigorous application of the requirement to justify requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification. NAA Reply at 12–17; further general support is demonstrated by NNA at 4–6, UPS Reply at 7 and Valpak at 8. The requirements of subsection (a)(1) shall appear in the final rule.

Subsection (a)(2) requires each Postal Service request to include a description of the operational bases of the Negotiated Service Agreement, including activities to be performed and facilities to be used by all participants.

DMA *et al.* argue that the Commission should not be concerned with how the mailer's operations work. With respect to the Postal Service, DMA *et al.* argue that the Commission only should be concerned to the extent it allows the Commission to probe the validity of cost estimates. DMA *et al.* at 11.

A thorough understanding of each participant's responsibilities and activities is relevant to the consideration of any request for a Negotiated Service Agreement. In some instances, this will require considerable detail, including information pertaining to operations to be performed, financial information, and the facilities to be used. The Commission also might require a broad understanding of the mailer's operations (and business activities) to review the competitive implications of the agreement. The level of detail required will be dependent on the specifics of the agreement. Negotiated Service Agreements are voluntary agreements; the standard rates, fees, and classifications are always available. Thus, mailers seeking Negotiated Service Agreements are expected to provide information relevant to the Commission's review of the agreement. The requirements of subsection (a)(2) shall appear in the final rule.

Subsection (a)(3) requires the Postal Service request to include a statement of the parties' expectation regarding performance under the Negotiated Service Agreement.

PostCom contends that subsection (a)(3) should be deleted because it is unlikely that the provision will solicit helpful views, the Commission should not be taking these views into consideration in its consideration of the agreement, and it could lead to regulatory and third-party intrusion into the negotiation process. PostCom at 8. DMA *et al.* question the relevance of subsection (a)(3), because only the terms and conditions of the agreement, and not expectations, are binding on any of the participants. DMA *et al.* at 11–12.

The Commission concludes that although the information required by subsection (a)(3) might provide some background, such a response inquiring of expectations would involve unnecessary speculation on the part of the participants, and is unlikely to be relevant to the Commission's final decision. If this issue becomes relevant to a specific request, the Commission can always request this information on a case-by-case basis. Subsection (a)(3) will not appear in the final rule.

Subsection (b) specifies that the Commission will establish a procedural schedule to allow for prompt issuance of a decision. A specific time requirement is not specified in the proposed rule.

The Postal Service suggests the establishment of a 150-day time limit from the date of filing for the Commission to issue its recommended decision. The Postal Service contends that this will lower the perceived transaction costs, and result in sooner implementation of the agreement. Furthermore, the Postal Service argues that the Commission considers far ranging issues within an omnibus rate case within a 10-month time frame. Thus, a more limited inquiry impacting perhaps only several mailers should be manageable within five months. Postal Service at 21–23. DMA *et al.* similarly argue for establishment of a 150-day time limit from the date of filing. DMA *et al.* at 8–9. Discover supports the Postal Service's suggestion to establish a 150-day time limit from the date of filing. Discover Reply at 4. Pitney Bowes does not suggest a specific limit, but argues that the Commission can add some certainty to the process by incorporating time limits into the rule. Pitney Bowes at 7.

OCA and NAA conditionally support the establishment of time limits. Rather than an 150-day deadline, OCA would support an 150-day goal. Adherence to the goal would be predicated on the proponents of the agreement not requesting waiver(s) and fully complying with all filing requirements. OCA Reply at 6. NAA argues that if the Commission adopts a time limit, then it should expressly reserve the right to take longer time if necessary for full and fair consideration. NAA Reply at 11–12.

The Commission is not inclined to include a deadline in the final rules. As the Commission previously stated, ''a Negotiated Service Agreement can take many forms, and may include unique and novel issues. Because of this, it is difficult to predict the duration of a proceeding before initial review of the actual request. A schedule will be established in each case, to allow for prompt issuance of a decision consistent with procedural fairness.'' PRC Order No. 1383 (August 27, 2003) at 15. Although establishing a goal of 150 days appears reasonable, the Commission does not have sufficient experience with requests for Negotiated Service Agreements to be more precise. Uncontested and fully supported requests for Negotiated Service Agreements should take less than 150 days to be reviewed. Requests for Negotiated Service Agreements that are contested or not fully supported might take longer than 150 days to be reviewed—as might be warranted in such cases. The intent of the Commission is to provide reasonable expedition under the circumstances presented when the request is filed.

Section 3001.196—Requests to Recommend a Negotiated Service Agreement that is Functionally Equivalent to a Previously Recommended Negotiated Service Agreement

Section 3001.196 governs Postal Service requests for recommended decisions in regard to Negotiated Service Agreements that are proffered as ''functionally equivalent'' to a Negotiated Service Agreement previously recommended by the Commission. The Negotiated Service Agreement previously recommended by the Commission is referred to as the ''baseline'' agreement. The baseline agreement is required to be in effect on the date that the request for a

change to its rate or fee. For these reasons, the Commission will not adopt the Postal Service's suggestion of providing a cite to § 3641 in § 3001.195.

functionally equivalent Negotiated Service Agreement is filed.

The purpose of § 3001.196 is to provide an opportunity to expedite the review of a request for a functionally equivalent Negotiated Service Agreement by allowing the proponents of the agreement to rely on relevant record testimony from a previous docket. This potentially could expedite the proceeding by avoiding the need to re-litigate issues that were recently litigated and resolved in a previous docket.

The Postal Service contends that the terminology ''functional equivalence'' will cause unnecessary and unwarranted confusion, and suggests use of ''derivative NSA'' as an alternative. Postal Service at 23–25. The Postal Service's concern is that previous usage of the terminology ''functional equivalence'' only referred to the operational functions of a service. For example, the Mailing Online Domestic Mail Classification Schedule language, which references a functionally equivalent service, only referred to the operational functions of Mailing Online.[22] Another example is the Domestic Mail Classification Schedule language proposed in the Capital One Stipulation and Agreement that refers only to the minimal substantive characterizations of that agreement.[23] In regard to Negotiated Service Agreements, the Commission has stated that functional equivalence is broader than the literal terms and conditions of each agreement. The Postal Service notes that the Commission suggests factors such as deriving a functionally equivalent benefit from a proposed agreement might be relevant to the determination of functional equivalency. PRC Order No. 1383 (August 27, 2003) at 3. The Postal Service suggests that this broader interpretation of ''functional equivalence'' is not consistent with previous interpretations, and could cause confusion.

The Commission will not adopt the terminology ''derivative NSA'' because it does not offer a real improvement over the proposed terminology and it does not address the heart of the problem, which lies in formulating a working definition for a concept that has not been fully explored.

The Commission has an additional concern in that the terminology ''derivative NSA'' might imply a too expansive definition for what may be considered under the § 3001.196 rules. This can best be described by example. Assume a baseline Negotiated Service Agreement that contains several operational elements. Then assume a second Negotiated Service Agreement that contains the identical operational elements, plus the addition of one or more additional, important, substantive functional elements. The second NSA could be said to be derived from, or a derivative of, the baseline Negotiated Service Agreement. The Commission would not find the second agreement ''functionally equivalent'' to the baseline agreement because the additional substantive elements, and their interaction with the other elements, would not previously have been reviewed. The Commission believes the term ''derivative NSA'' might cause confusion in such a case.

As a second alternative to ''functional equivalence,'' the Postal Service suggests even more neutral terms such as ''category 1'' and ''category 2'' to respectively describe a baseline and a functionally equivalent Negotiated Service Agreement. Postal Service Reply at 20–21.

The Postal Service's alternate suggestions of category 1 and category 2 Negotiated Service Agreements lends even less clarity to the situation. To be useful, terminology such as category 1 and category 2 necessarily require definitions. Thus, the original definitional problem remains and is only hidden behind more non-descriptive terminology.

The Commission understands the Postal Service's concerns, but does not envision more complete resolution of this issue until further experience with Negotiated Service Agreements has been developed. To better understand the Commission's expectations, the Commission below discusses three terms: ''functionally equivalent,'' ''similarly situated,'' and a new term ''comparable benefit.'' This discussion should add some context in which the terminology can be more fully developed in the future.

''Functional equivalency'' focuses on (1) a comparison of the literal terms and conditions of one Negotiated Service Agreement with the literal terms and conditions of a second Negotiated Service Agreement, and (2) a comparison of the effect that each agreement has upon the Postal Service.

The first part of the analysis is an examination of the literal terms and conditions of each Negotiated Service Agreement. For two different Negotiated Service Agreements to be considered functionally equivalent, each agreement must primarily rest on the same substantive functional elements. At this point, the Commission expects to focus on examining how each element functions or works, and not on the specific numeric details (*i.e.*, costs, volumes, breakpoints, etc.).

For example, the Capital One NSA contains two functional elements, an address correction element (which is the primary cost savings element for the Postal Service), and a declining-block rate element. Assume that a second Negotiated Service Agreement consists of a similar address correction element and a similar declining-block rate element, with no additional elements. This would satisfy the first part of the analysis for functional equivalency. Assume that a third Negotiated Service Agreement consists of a substitute cost savings element (other than the address correction element contained in the first agreement but still providing a comparable cost savings) and a similar declining-block rate element. The cost savings element is not similar and thus this agreement would not satisfy the first part of the analysis for functional equivalency.[24]

For the second part of the analysis, the Commission will go beyond the literal terms and conditions of the agreements and compare the effect that the baseline and proffered functionally equivalent agreements have on the Postal Service. The Commission gave an example that the analysis might examine whether the Postal Service derives a ''functionally equivalent'' benefit from a proposed subsequent Negotiated Service Agreement. *See* PRC Order No. 1383 (August 27, 2003) at 3, fn. 3. The choice of words ''functionally equivalent benefit'' was unfortunate because of the confusion it could cause when considering overall functional equivalency. The Commission will instead adopt the terminology ''comparable benefit'' to describe this concept. A comparable benefit does not

[22] The Commission was notified on August 29, 2003 that the Postal Service was no longer offering the experimental Mailing Online service. The Commission subsequently removed references to Mailing Online (including the definition for a functionally equivalent service) from the Domestic Mail Classification Schedule in the October 19, 2003 revision to the Domestic Mail Classification Schedule. Thus, this source of potential confusion no longer exists.

[23] The Postal Service contends that the Commission failed to incorporate language suggested by the Capital One Stipulation and Agreement into the Domestic Mail Classification Schedule in regard to mailers eligible for functionally equivalent Negotiated Service Agreements. The Postal Service assumes that this omission was an oversight. Postal Service at 23–24, fn. 9. The language in question had in fact been incorporated into the Domestic Mail Classification Schedule at § 610.12.

[24] The Commission would entertain waiver requests to avoid re-litigation of similar elements as long as the material is current and remains relevant.

mean an identical benefit, but instead will be placed into context by the terms and conditions of each agreement, and the characteristics of each participant.

For example, again assume the Capital One NSA is proposed as the baseline agreement (an address correction element and a declining-block rate element). The proposed subsequent agreement contains identical terms and conditions to the terms and conditions contained in the Capital One NSA. Thus far, because the literal terms and conditions of both agreements are identical, the first condition of functional equivalency has been met. However, the second mailer, Mailer Two, does not approach the return rate of Capital One to the point that the address correction element is essentially irrelevant, and most if not all of the potential Postal Service cost savings are eliminated. (In reality, the agreement consists solely of a declining-block rate discount.) The Postal Service will not obtain a comparable benefit from such an agreement. The Commission would therefore not consider Mailer Two's agreement to be functionally equivalent to the Capital One Negotiated Service Agreement.

In the above example, it can be concluded that Mailer Two is not ''similarly situated'' to Capital One. ''Similarly situated'' refers to a comparison of the relevant characteristics of different mailers as the characteristics apply to a particular Negotiated Service Agreement. Mailer Two's agreement was found not functionally equivalent because it lacked a comparable benefit to the Postal Service. However, whether or not Mailer Two is similarly situated to Capital One is not dispositive of the issue. It is possible that two mailers who are not similarly situated could qualify for functionally equivalent Negotiated Service Agreements, given comparable benefits to the Postal Service.

Discussions of whether mailers are similarly situated are more appropriately reserved for allegations of possible discrimination or discussion of competitive issues. A qualifying mailer that is similarly situated to a mailer participating in a Negotiated Service Agreement must have a similar opportunity to participate in a functionally equivalent Negotiated Service Agreement. Not providing this opportunity would raise the possibility of discrimination. In an attempt to differentiate the concepts of functionally equivalent from the concept of similarly situated, the Commission will strive to use the terminology similarly situated only when addressing concerns of competition or discrimination, and not to use similarly situated when addressing application of the functional equivalency rules.

The issue of discrimination might arise in a separate complaint where a mailer alleges that it is similarly situated to a mailer operating under the terms and conditions of a Negotiated Service Agreement, but that it has been denied a similar opportunity to participate in a functionally equivalent Negotiated Service Agreement.

The issue of discrimination also might arise in opposition to a Postal Service request to recommend a functionally equivalent Negotiated Service Agreement. In this instance, assume that the proposed Negotiated Service Agreement (the Mailer Two agreement) is found functionally equivalent to a baseline Negotiated Service Agreement. Further assume that Mailer Two is not similarly situated to the mailer in the baseline agreement. For example, Mailer Two is in a different industry than the mailer in the baseline agreement.[25] Further assume the possibility that the industry in which Mailer Two operates might find the functionally equivalent Negotiated Service Agreement anti-competitive or discriminatory. The baseline case might or might not have addressed the industry specific issue of competition or discrimination in Mailer Two's industry.

Section 3001.196(a)(6)(ii) and (iii), as proposed, alerts the Postal Service that competitive issues will be relevant to every request predicated on a functionally equivalent Negotiated Service Agreement. Assuming compliance with § 3001.196(a)(6)(ii) and (iii), the Commission would likely find application of the expedited functional equivalency rules appropriate for streamlining much of the hypothetical proceeding. However, if substantive issues in regard to competition or discrimination are raised by a representative of Mailer Two's industry, and these industry specific issues were not adequately addressed in the baseline proceeding, the Commission would not bar representatives of Mailer Two's industry from raising these issues in the functionally equivalent proceeding. Furthermore, if these concerns have merit, it might not be possible to adhere to the expedited procedural schedule as proposed in § 3001.196(d).

Valpak advocates articulating specific criteria to determine whether one Negotiated Service Agreement is functionally equivalent to another Negotiated Service Agreement. It contends that this will help mailers argue their case for comparable treatment with the Postal Service, and that it will add certainty to whether the functional equivalency rules apply to review of a new request. Valpak at 4–8.

Valpak's suggestion would add clarity to the rules, however as the preceding discussion highlights, without additional experience it may be neither possible nor wise to attempt to delineate distinctions at this time. The rules as proposed place the burden of arguing functional equivalency on the Postal Service. The Commission will decide this issue on a case-by-case basis early in the proceeding. Given the need to gain experience with the application of these rules, specific criteria defining functional equivalency will not be included in the rules. As noted throughout this discussion, it is the Commission's expectation that these rules will be refined and improved in the future.

Subsection (a) limits the applicability of § 3001.196 to an agreement that is proffered as functionally equivalent to a Negotiated Service Agreement previously recommended by the Commission *and currently in effect.*

The Postal Service suggests the elimination of the limitation ''and currently in effect.'' [26] It contends that the limitation is undesirable because it might encourage longer duration baseline Negotiated Service Agreements even where not appropriate, or because it may influence negotiations by creating a deadline to conclude negotiations. The Postal Service asserts that the option of using a waiver to circumvent the requirement would only inject more uncertainty into the Negotiated Service Agreement development process. It alternatively suggests that the timeliness of the proffered baseline Negotiated Service Agreement could be considered on a case-by-case basis as one element of the § 3001.196 requirement for the Commission to determine whether it is appropriate to proceed under § 3001.196. Postal Service Supplement at 1–4.

The Commission included ''and currently in effect'' in the rule to add some certainty to what agreements can be used as baseline agreements for functionally equivalent proposals. After a period of time, the probability increases that the material used in support of a baseline agreement will

[25] This might or might not require a more expansive definition of similarly situated than previously proposed. For this discussion, it shall be assumed that the mailer's industry is relevant to a finding of similarly situated.

[26] The following discussion also is applicable to the ''currently in effect'' limitation appearing in § 3001.195(a).

become dated and no longer relevant to the review of a functionally equivalent Negotiated Service Agreement. The Postal Service's concern, that the limitation will encourage entering into agreements that are more lengthy than appropriate to facilitate approval of functionally equivalent agreements, does not seem plausible. If a baseline agreement proves beneficial, it can easily be extended. If it is not beneficial, the desirability of a functionally equivalent agreement is suspect. The Commission will entertain waiver requests where appropriate when it is necessary to use a shorter-term (for example, less than 12 month) Negotiated Service Agreement as a baseline.[27] Use of a longer-term Negotiated Service Agreement as a baseline poses less of a problem. Similarly situated mailers would have early and adequate notice of the potential for a functionally equivalent Negotiated Service Agreement upon approval of the baseline agreement. This then will provide a one to three year window in which to negotiate a functionally equivalent Negotiated Service Agreement. This appears to be adequate, given the emphasis placed on rapidly negotiating and implementing such agreements exhibited by many of the comments. The ''and currently in effect'' limitation serves as a useful benchmark for excluding outdated baseline agreements. While recognizing that exceptions might be made, the limitation will remain in the final rule.

NAA suggests several items that could be incorporated into § 3001.196. For instance, NAA suggests that the rules expressly provide that particular volume levels are not necessary to be considered ''similarly situated'' or ''functionally equivalent.'' NAA further requests the Commission to identify the record on which it will determine whether it is appropriate to proceed under § 3001.196, and whether discovery will be allowed for this purpose. NAA Reply at 16–17.

The rules proposed by the Commission are general enough to be applicable to a wide range of potential Negotiated Service Agreements. Consideration of specific issues is better left to case-by-case consideration until further experience is gained with the review of requests for Negotiated Service Agreements. The determination of whether it is appropriate to proceed under § 3001.196 will be based on the Postal Service's request (including the associated and referenced material), the material from the proffered baseline docket, and oral and written argument presented prior to or on the date of the prehearing conference. If necessary, the Commission may request additional material for consideration. Consistent with subpart A of the Commission's rules, discovery will be allowed, for relevant purposes, from the moment of intervention to a period of time following the prehearing conference. This time period may or may not be adequate for the purpose of probing functional equivalency, and if necessary, requests for extensions or special provisions for discovery will be considered on a case-by-case basis.

OCA suggests an amendment to § 3001.196(a)(6)(i) to clarify that the financial consequences of mailer-specific differences from a baseline Negotiated Service Agreement would have to be presented at the same level of detail as for the baseline Negotiated Service Agreement. As originally proposed, § 3001.196(a)(6)(i) states: ''[The Postal Service request shall include:] the financial impact of the Negotiated Service Agreement on the Postal Service over the duration of the agreement.'' OCA proposes to modify this section to read: ''[The Postal Service request shall include:] the financial impact of the Negotiated Service Agreement on the Postal Service as set forth in § 3001.193(e).'' OCA at 16–17.

The requirement as proposed clearly indicates that the financial impact of the Postal Service request will be relevant to the Commission's decision, and that the Postal Service must cover this topic in its request. The Commission does not want to preclude use of relevant financial information that could be referenced from a baseline docket, or restrict the Postal Service's ingenuity in preparing its request so as to facilitate expedited consideration. This suggestion will not be adopted into the final rule.

Subsection (b) requires the Postal Service to provide written notice of its request to certain participants who are assumed to be those potentially interested in the proceeding. The requirement is in addition to the requirement of providing notice by posting on the Commission's web site. This requirement balances the Commission's intent to limit the time period for intervention, and the requirement for interested participants to be adequately notified of a pending proceeding.

The Postal Service does not object to subsection (b), but notes that after successful implementation of electronic filing, this requirement returns the Commission to the hard copy world. The Postal Service suggests that the Commission experiment with its e-mail notification system as an alternative to hard copy service. Postal Service at 27.

Although the modest subsection (b) requirement is redundant, the Commission is concerned that the goal of expediting a procedural schedule could be thwarted by a claim of insufficient notice. The Commission will include the subsection (b) requirement in the final rule, but will not be averse to revisiting and potentially eliminating this requirement based on future experience.

The Postal Service's comments about experimenting with the e-mail notification system for providing notice are well taken, and could be considered in the future. However, as it exists today, the e-mail notification system is strictly a voluntary system. It is not sufficiently developed and provides no assurance that a participant will receive notice without the participant properly activating the system.

Subsection (c) establishes that a prehearing conference will be scheduled for each request. The proposed rule specifies that participants shall be prepared to address at the prehearing conference whether or not to proceed under the functional equivalency rules.

Discover proposes a deadline of five days from the date of the prehearing conference for the Commission to determine whether or not to proceed under § 3001.196. Discover at 2.

The Commission intends to take a proactive approach to determine whether to proceed under § 3001.196, rather than adhere to an artificial deadline and quickly issue a less informative ruling with limited guidance. For Postal Service proposals that support the application of the functional equivalency rules, and in which application of the functional equivalency rules are unopposed, the Commission could rule on this issue at the prehearing conference. More complex scenarios might require additional time. Where the issue is controversial, or where the Postal Service has not supported application of the functional equivalency rules, the process will benefit if the Commission takes the necessary time to evaluate the facts and present a well reasoned ruling. The Commission shall not establish a deadline to be included in the rules.

[27] The transaction costs of negotiating and approving short-term Negotiated Service Agreements potentially limit their usefulness, and thus might limit the number of such agreements. Use of waivers to facilitate timely, short-term functionally equivalent agreements should ease this concern. If the Postal Service were to anticipate a great interest in any particular short-term Negotiated Service Agreement, consideration could be given to reformulating the agreement as a niche classification. This potentially will reduce overall transaction costs, and implement the service in a shorter period of time.

The Postal Service proposes an additional provision to require participants to identify issues they wish to contest not later than five days prior to the prehearing conference. Postal Service at 26; see also, Discover Reply at 6.

Assuming that the Commission determines it is appropriate to proceed under § 3001.196, the Commission must then determine whether or not to schedule a hearing. The Postal Service's proposal to identify issues early in the proceeding will provide the Commission with the required basis on which to make this determination. Thus, the Commission sees benefit in the Postal Service's proposal. However, a requirement to identify issues five days prior to the prehearing conference does not provide adequate time for potential participants to study a new Postal Service request, determine whether or not to intervene, receive answers to discovery requests, and file pleadings identifying the issues to be contested. The Commission will establish the later deadline of the prehearing conference. This will provide five additional days to identify issues, and appears more reasonable.

The final rule will modify subsection (c) to require identification of issues that participants wish to contest, and establish a deadline of the prehearing conference. As originally proposed, the second sentence of subsection (c) states: ''Participants shall be prepared to address whether or not it is appropriate to proceed under § 3001.196 at that time.'' The final rule will modify this sentence to read: ''Participants shall be prepared at the prehearing conference to address whether or not it is appropriate to proceed under § 3001.196, and to identify any issue(s) that would indicate the need to schedule a hearing.'' [28]

Subsection (d) specifies that the Commission will establish a procedural schedule to allow for issuing a decision not more than 60 days (if no hearing is held) or 120 days (if a hearing is scheduled) after determining to proceed under § 3001.196.

Discover contends that these time periods are far too long and thus may prejudice or place the party seeking a functionally equivalent agreement at a competitive disadvantage. It suggests shortening the time periods to 30 and 90 days respectively. Discover at 3–4. UPS comments that shortening the schedule to consider a functionally equivalent Negotiated Service Agreement to as little as 90 days is a step in the wrong direction. UPS Reply at 7.

The Commission shares an interest in expediting review of functionally equivalent agreements, but this interest must be balanced against due process and assuring compliance with the requirements of the Act. The 60-day and 120-day timelines are not targets, but maximums. It should be possible to more promptly issue recommendations in some cases. These time frames appear reasonable and necessary to assure due process, and will remain in the final rule.

OCA's Supplemental Comments

The OCA filed supplemental comments which draw interesting comparisons between Negotiated Service Agreements, and the Postal Service's ''pilot test'' of access to Certified Mail bulk electronic delivery information addressed in Docket No. C2003–2. The OCA asks the Commission to ''indicate in its proposed NSA rules under what circumstances it is necessary to file a request for a proposed customer-specific arrangement that is subject to the Commission's jurisdiction under 39 U.S.C. §§ 3622 and 3623.'' [29]

Discover does not oppose OCA's filing of supplemental comments, but requests that the Commission defer consideration of the issues raised in the supplemental comments until after final consideration of the Negotiated Service Agreement rules proposed in Docket No. RM2003–5.[30] The Postal Service suggests that the Commission reject the supplemental comments as untimely and inappropriate.[31] The Postal Service notes that OCA's initiative ''is founded on a complicated and controversial question involving the circumstances under which any activity pursued by the Postal Service and its customers or others might rise to the level of an undertaking that must be pursued through a rate or classification proceeding at the Commission.''

OCA's supplemental comments raise basic issues that the Commission and the Postal Service have been grappling with since the establishment of the Act, and which have led to the initiation of several complaint dockets.[32] The comments concern the institutional relationship between the Postal Service and the Commission whenever the Postal Service decides to propose changes in its services, including rates, fees and classifications. The Commission will allow the supplemental comments to remain in the record of this docket because they might provoke thought on this issue at a future point in time. However, because the issues raised are so broad and encompassing, consideration would unreasonably delay resolution of the issues more pertinent to this rulemaking which is dedicated to rules concerning Negotiated Service Agreements. Thus, the Commission will not entertain the issues raised in the supplemental comments at this time.

Ordering Paragraphs

It is ordered:

1. Motion for Late Acceptance of Comments by Discover Financial Services, Inc., September 30, 2003, is granted.

2. The EW Motion for a One-Day Extension of Time to File Comments, September 30, 2003, is granted.

3. The Postal Service Motion for a One-Day Extension of Time to File Comments, September 29, 2003, is granted.

4. Office of the Consumer Advocate Motion to be Permitted to File Supplemental Comments on NSAs vs. Pilot Tests, October 10, 2003, is granted.

5. Motion of the United States Postal Service for Leave to File Supplemental Comments, October 17, 2003, is granted.

6. Any suggestion not specifically addressed by this ruling is not accepted for incorporation into the final rule.

7. The Commission shall incorporate the final amendments to rules 5, 51 and 61; and new Subpart L following the Secretary's signature into the Commission's Rules of Practice and Procedure appearing in 39 CFR § 3001.

8. The Secretary shall arrange for publication of this Order Establishing

[28] It is strongly suggested that oral argument on the above issues be accompanied by the filing of a clear and concise written pleading on the date of, or prior to, the prehearing conference. The Commission intends to decide the above issues in a timely fashion, and will work to avoid protracted motions practice.

[29] OCA Supplemental at 5.

[30] Response of Discover Financial Services, Inc. to OCA's Motion to File Supplemental Comments, October 14, 2003 (Discover Opposition).

[31] Postal Service Reply at 1–2, fn. 1.

[32] OCA states: ''In Order No. 1385, the Commission determined that a Postal Service decision to provide a new form of Certified Mail service, consisting of bulk electronic return information to three mailers—Pitney Bowes, U.S. Certified Letters LLC, and Out Source Solutions, explicitly excluding Walz, was in harmony with the requirements of the Postal Reorganization Act, apparently because only three mailers were involved (a 'limited number of participants') and the pilot test was of 'short duration'—either 8/9 months by the Postal Service's reckoning or 19/20 months by the Commission's.'' OCA Supplemental at 3 (footnote omitted). This is not a correct interpretation of Order No. 1385. The Commission in general found issues related to the pilot test moot because the pilot test had been terminated well prior to the filing of the complaint, and there were no further issues related to the pilot test that could be remedied through the complaint process. See PRC Order No. 1385 (October 9, 2003) at 8, fn. 10. Thus, the Commission did not reach a conclusion on whether the pilot test was in harmony with the requirements of the Postal Reorganization Act.

Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements in the **Federal Register**. These changes will take effect 30 days after publication in the **Federal Register**.

Issued: February 11, 2004.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

■ For the reasons set forth in the preamble, the Commission amends 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3663.

Subpart A—Rules of General Applicability

■ 2. Amend § 3001.5 by adding new paragraph (r) to read as follows:

§ 3001.5 Definitions.

* * * * *

(r) *Negotiated Service Agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

■ 3. Revise § 3001.51 to read as follows:

§ 3001.51 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to Negotiated Service Agreements, subpart L, supersede the otherwise applicable rules of this subpart.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

■ 4. Revise § 3001.61 to read as follows:

§ 3001.61 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to section 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to Negotiated Service Agreements, subpart L, supersede the otherwise applicable rules of this subpart.

■ 5. Amend part 3001 by adding Subpart L—Rules Applicable to Negotiated Service Agreements to read as follows:

Subpart L—Rules Applicable to Negotiated Service Agreements

Sec.

Subpart L—Rules Applicable to Negotiated Service Agreements

§ 3001.190 Applicability.

(a) The rules in this subpart govern requests of the Postal Service for recommended decisions pursuant to sections 3622 or 3623 of the Act that are based on Negotiated Service Agreements. The Rules of General Applicability in subpart A of this part are also applicable to proceedings on requests subject to this subpart. The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements. Except where specifically noted, this subpart does not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates, fees, or mail classifications.

(b) In administering this subpart, it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration; however, this limitation is not intended to bar the Postal Service from requesting:

(1) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, see § 3001.197; or

(2) Recommendation of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, see § 3001.196.

§ 3001.191 Filing of formal requests.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the mail classification schedule based on a Negotiated Service Agreement, the Postal Service shall file with the Commission a formal request for a recommended decision. The request shall clearly state whether it is a request for a recommended decision pursuant to:

(1) The review of a baseline Negotiated Service Agreement, see § 3001.195;

(2) The review of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, see § 3001.196;

(3) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, see § 3001.197; or

(4) The modification of the terms and conditions of a previously recommended Negotiated Service Agreement, see § 3001.198. Such request shall be filed in accordance with the requirements of §§ 3001.9 through 3001.12. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the director of the Office of the Federal Register for publication in the **Federal Register**.

(b) The Postal Service shall clearly identify all parties to the Negotiated Service Agreement. Identification by the Postal Service shall serve as Notice of Intervention for such parties. Parties to the Negotiated Service Agreement are to be considered co-proponents,

procedurally and substantively, during the Commission's review of the proposed Negotiated Service Agreement.

§ 3001.192 Filing of prepared direct evidence.

(a) Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service and its co-proponents shall file all of the prepared direct evidence upon which they propose to rely in the proceeding on the record before the Commission to establish that the proposed Negotiated Service Agreement is in the public interest and is in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits, which shall be filed in accordance with § 3001.31.

(b) Direct evidence may be filed in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement. Direct evidence in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement shall not be accepted without prior Postal Service review. The Postal Service shall affirm that it has reviewed such testimony and that such testimony may be relied upon in presentation of the Postal Service's direct case.

§ 3001.193 Contents of formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates, fees, and/or the mail classification schedule(s) associated with the Negotiated Service Agreement, and to show that the changes or adjustments are in the public interest and in accordance with the policies and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (k) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (k) of this section is not available and cannot be made available without undue burden, the request shall include a request for waiver of that requirement supported by a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether sufficiently reliable estimates are available to mitigate the need for such information, and if so, the specifics of such estimates.

(3) If the Postal Service believes that any of the data or other information required to be filed under § 3001.193 should not be required in light of the character of the request, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement.

(4) Grant of a waiver under paragraphs (a)(2) or (a)(3) of this section will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention:

(i) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.193; or

(ii) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

(5) The provisions of paragraphs (a)(2) and (a)(3) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (k) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(6) The Commission may request information in addition to that required by paragraphs (b) through (k) of this section.

(b) *Negotiated Service Agreement.* Every formal request shall include a copy of the Negotiated Service Agreement.

(c) *Rates and standards information.* Every formal request shall include a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate or fee schedule.

(d) *Description of agreement.* Every formal request shall include a statement describing and explaining the operative components of the Negotiated Service Agreement. The statement shall include the reasons and bases for including the components in the Negotiated Service Agreement.

(e) *Financial analysis.* Every formal request shall include an analysis, as described in § 3001.193(e)(1), of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues in a one-year period intended to be representative of the first year of the proposed agreement. If the agreement is proposed to extend beyond one year, the request shall also include an analysis of the effects of the agreement on Postal Service volumes, costs and revenues in each subsequent year of the proposed agreement, as described in § 3001.193(e)(2). For each year, the analysis shall provide such detail that the analysis of each component of a Negotiated Service Agreement can be independently reviewed, and shall be prepared in sufficient detail to allow independent replication, including citation to all referenced material.

(1) The financial analysis for the one-year period intended to be representative of the first year of the proposed agreement shall:

(i) Set forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year, assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement;

(ii) Set forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year which result from implementation of the Negotiated Service Agreement;

(iii) Include an analysis of the effects of the Negotiated Service Agreement on contribution to the Postal Service for that year (including consideration of the effect on contribution from mailers who are not parties to the agreement);

(iv) Utilize mailer-specific costs for that year, and provide the basis used to determine such costs, including a discussion of material variances

between mailer-specific costs and system-wide average costs; and

(v) Utilize mailer-specific volumes and elasticity factors for that year, and provide the bases used to determine such volumes and elasticity factors. If mailer-specific costs or elasticity factors are not available, the bases of the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed costs or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

(2) The financial analysis for each subsequent year covered by the agreement (if the proposed duration of the agreement is greater than one year) shall:

(i) Identify each factor known or expected to operate in that subsequent year which might have a material effect on the estimated costs, volumes, or revenues of the Postal Service, relative to those set forth in the financial analysis provided for the first year of the agreement in response to § 3001.193(e)(1). Such relevant factors might include (but are not limited to) cost level changes, anticipated changes in operations, changes arising from specific terms of the proposed agreement, or potential changes in the level or composition of mail volumes;

(ii) Discuss the likely impact in that subsequent year of each factor identified in § 3001.193(e)(2)(i), and quantify that impact to the maximum extent practical; and

(iii) Estimate the cumulative effect in that subsequent year of all factors identified in § 3001.193(e)(2)(i) on the estimated costs, volumes, and revenues of the Postal Service, relative to those presented for the first year of the agreement in response to § 3001.193(e)(1).

(f) *Impact analysis.* (1) Every formal request shall include an analysis of the impact over the duration of the Negotiated Service Agreement on:

(i) Competitors of the parties to the Negotiated Service Agreement other than the Postal Service;

(ii) Competitors of the Postal Service; and

(iii) Mail users.

(2) The Postal Service shall include a copy of all completed special studies that were used to make such estimates. If special studies have not been performed, the Postal Service shall state this fact and explain the alternate bases of its estimates.

(g) *Data collection plan.* Every formal request shall include a proposal for a data collection plan, which shall include a comparison of the analysis presented in § 3001.193(e)(1)(ii) and § 3001.193(e)(2)(iii) with the actual results ascertained from implementation of the Negotiated Service Agreement. The results shall be reported to the Commission on an annual or more frequent basis.

(h) *Workpapers.* (1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (k) of this section;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (k) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(i) *Certification by officials.* (1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (i)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his/her knowledge, information and belief, every statement contained in the instrument is proper.

(j) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.194 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.195 Requests to recommend a baseline Negotiated Service Agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a baseline Negotiated Service Agreement, *i.e.*, a Negotiated Service Agreement that is not predicated on a functionally equivalent Negotiated Service Agreement currently in effect. The purpose of this section is to establish procedures which provide for maximum expedition of review consistent with procedural fairness, and which allows for the recommendation of a baseline Negotiated Service Agreement. The Postal Service request shall include:

(1) A written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification; and

(2) A description of the operational bases of the Negotiated Service Agreement, including activities to be performed and facilities to be used by both the Postal Service and the mailer under the agreement.

(b) The Commission will treat requests predicated on a baseline Negotiated Service Agreement as subject to the maximum expedition consistent with procedural fairness. A schedule will be established, in each case, to allow for prompt issuance of a decision.

§ 3001.196 Requests to recommend a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a Negotiated Service Agreement that is proffered as functionally equivalent to a Negotiated Service Agreement previously recommended by the Commission and currently in effect. The previously recommended Negotiated Service Agreement shall be referred to as the baseline agreement. The purpose of this section is to establish procedures that provide for accelerated review of functionally equivalent Negotiated Service Agreements. The Postal Service request shall include:

(1) A detailed description of how the proposed Negotiated Service Agreement is functionally equivalent to the baseline agreement;

(2) A detailed description of how the proposed Negotiated Service Agreement is different from the baseline agreement;

(3) Identification of the record testimony from the baseline agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including specific citation to the locations of such testimony;

(4) All available special studies developing information pertinent to the proposed Negotiated Service Agreement;

(5) If applicable, the identification of circumstances unique to the request; and

(6) If applicable, a proposal for limitation of issues in the proceeding, except that the following issues will be relevant to every request predicated on a functionally equivalent Negotiated Service Agreement:

(i) The financial impact of the Negotiated Service Agreement on the Postal Service over the duration of the agreement;

(ii) The fairness and equity of the Negotiated Service Agreement in regard to other users of the mail; and

(iii) The fairness and equity of the Negotiated Service Agreement in regard to the competitors of the parties to the Negotiated Service Agreement.

(b) When the Postal Service submits a request predicated on a functionally equivalent Negotiated Service Agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the baseline agreement.

(c) The Commission will schedule a prehearing conference for each request. Participants shall be prepared at the prehearing conference to address whether or not it is appropriate to proceed under § 3001.196, and to identify any issue(s) that would indicate the need to schedule a hearing. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.196. If the Commission's decision is to not proceed under § 3001.196, the request will proceed under § 3001.195.

(d) The Commission will treat requests predicated on functionally equivalent Negotiated Service Agreements as subject to accelerated review consistent with procedural fairness. If the Commission determines that it is appropriate to proceed under § 3001.196, a schedule will be established which allows a recommended decision to be issued not more than:

(1) 60 days after the determination is made to proceed under § 3001.196, if no hearing is held; or

(2) 120 days after the determination is made to proceed under § 3001.196, if a hearing is scheduled.

§ 3001.197 Requests to renew previously recommended Negotiated Service Agreements with existing participant(s). [Reserved]

§ 3001.198 Requests to modify previously recommended Negotiated Service Agreements. [Reserved]

[FR Doc. 04–3440 Filed 2–17–04; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

OPP–2003–0389; FRL–7341–6]

Aminoethoxyvinylglycine hydrochloride (aviglycine HCl); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of aminoethoxyvinylglycine hydrochloride (aviglycine HCl) in or on apple, pear and the stone fruits crop group 12, excepting cherries. Valent BioSciences Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective February 18, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0389, must be received on or before April 19, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address:*greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0389. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public

docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html/*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of November 13, 2003 (68 FR 64343) (FRL–7333–6), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6F4632, transferred from Abbott Laboratories) by Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. That notice included a summary of the petition prepared by Valent BioSciences Corporation, the registrant. There were no comments received in response to the notice of filing.

In the **Federal Register** of November 19, 2003 (68 FR 65281) (FRL–7334–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 3F6772) by Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. That notice included a summary of the petition prepared by Valent BioSciences Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.502 be amended by establishing permanent tolerances for residues of the biochemical pesticide aminoethoxyvinylglycine hydrochloride (aviglycine HCl), formerly designated as aminoethoxyvinylglycine (AVG), in or on apple and pear at 0.08 parts per million (ppm) (PP 6F4632), and in or on the stone fruits crop group 12, excepting cherries, at 0.170 ppm (PP 3F6772). Data submitted and summarized by Valent BioSciences Corporation in these petitions include: Domestically and internationally generated residue data; another acute inhalation toxicity study; and subchronic toxicity (rat, mouse and dog), and metabolism (rat and comparative mouse and rat) studies, as well as a Tier III biochemical pesticide toxicity study (rat carcinogenicity), and additional studies (rabbit developmental toxicity and rat chronic toxicity) to refine assessments of subpopulation sensitivities and carcinogenic potential.

Previously, in support of both time-limited and temporary tolerances issued by EPA for residues of aviglycine HCl in or on apple, pear, and the stone fruits crop group 12 (May, 7, 1997, 62 FR 24835, FRL–5713–3, corrected on October 29, 1997, 62 FR 56089, FRL–5751–5; June 10, 1999, 64 FR 31124, FRL–6080–4; July 12, 2001, 66 FR 36477, FRL–6788–7; and July 12, 2001, 66 FR 36481, FRL–6790–7), residue studies and toxicity data consistent with the Tier I biochemical pesticide toxicity data requirements, as described in 40 CFR 158.690(c), were submitted. That data included acute oral, dermal and inhalation toxicity studies; eye and skin irritation studies; dermal sensitization and one genotoxicity study (Ames test); and subchronic (immunotoxicity) and developmental toxicity studies in the rat. Several additional toxicity studies, although not required for biochemical pesticides, also were submitted previously, including two mammalian mutagenicity studies (Tier II rat micronuclei and mouse lymphoma) and subchronic studies (including 21–day dermal toxicity) in the rat. In addition, a conditionally required 2–generation rat reproduction study was submitted previously to reduce the uncertainties associated with the assessment of susceptibility of infants and children to potential hazards from aviglycine HCl exposure. All of this toxicity data on aviglycine HCl, both the new data submitted with the new petitions considered in this final rule and the data previously submitted and mentioned above has been considered and factored into the action taken in this final rule.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of aviglycine HCl on apple and pear at 0.08 ppm, and on the stone fruits crop group 12, excepting cherries, at 0.170 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by aviglycine HCl

are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

The acute toxicity studies indicated low toxicity for technical aviglycine HCl, placing it into Toxicity Category III for dermal toxicity, and Toxicity Category IV for oral toxicity and eye and skin irritation. A new acute inhalation toxicity study considered as part of this action changed the technical grade material's classification from Toxicity Category III to Toxicity Category IV. Dermal sensitization studies also indicated that aviglycine HCl is a non-sensitizer. Finally, in order to comply with the statutory requirements under FIFRA section 6(a)(2) and EPA's data requirements (40 CFR section 158.690(c)), any incident of hypersensitivity associated with use of aviglycine HCl must be reported to the Agency.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity-rat	NOAEL = 2.2 milligram/kilogram/day (mg/kg/day) for females, 9.2 mg/kg/day (highest dose tested) for males LOAEL = 9.4 mg/kg/day (the highest dose tested for females) based on reduced body weight gain, food consumption and food efficiency; increased severity and incidence of reversible kidney and liver effects; and discoloration of the liver
870.3100	90–Day oral toxicity-rat	NOAEL = 0.4 mg/kg/day for males and females LOAEL = 4.0 mg/kg/day for males and females, based on increased incidence of periportal hepatocellular vacuolation in the liver
870.3100	90–Day oral toxicity-mouse	NOAEL = 9.5 mg/kg/day for males and 9.6 mg/kg/day for females LOAEL = 23.4 mg/kg/day for males and 23.2 mg/kg/day for females based on clinical signs in both sexes, decreased mean body weight and body weight gain in males, decreased relative spleen and kidney weights in males, histopathology in the adrenal glands of females, and increased testicular atrophy in males
870.3150	90–Day oral toxicity-dog	NOAEL = 0.6 mg/kg/day LOAEL = 1.2 mg/kg/day based on decreased body weight gain, food consumption, uterine weights, and liver pathology
870.3200	21–Day dermal toxicity-rat	NOAEL = 1,000 mg/kg/day (limit dose) A LOAEL was not determined. Limit doses are as high a dose level as can practically be tested; when there are no effects, a LOAEL is not needed
870.3700	Prenatal developmental-rat	Maternal NOAEL = 1.77 mg/kg/day LOAEL = 8.06 mg/kg/day based on decreased body weight gain, food consumption, defecation, and the presence of perinasal red material Developmental NOAEL = 1.77 mg/kg/day LOAEL = 8.06 mg/kg/day based on decreased mean fetal body weights and developmental skeletal variants
870.3700	Prenatal developmental-rabbit	Maternal NOAEL = 0.4 mg/kg/day LOAEL = 0.7 mg/kg/day based on decreased body weight gains and food consumption Developmental NOAEL = 0.2 mg/kg/day LOAEL = 0.4 mg/kg/day based on the presence of developmental malformations
870.3800	Reproduction and fertility effects-rat	Parental/Systemic NOAEL = 0.8 mg/kg/day for males, 2.5 mg/kg/day for females LOAEL = 2.5 mg/kg/day based on decreased absolute body weight and body weight gain, and periportal hepatocellular vacuolation in the liver in F_0 and F_1 adult males; 4 mg/kg/day for females based on decreased absolute body weights, body weight gain and food consumption in F_1 generation Reproductive NOAEL = 4 mg/kg/day LOAEL = 8 mg/kg/day based on decreased testicular weight, changes in sperm morphology, etc., and increased incidence of testicular histopathology Offspring NOAEL = 2.5 mg/kg/day LOAEL = 4 mg/kg/day based on decreased viability of F_1 pups and retarded growth in F_1 and F_2 pups

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.4100	Chronic toxicity-rat (1–year feeding)	NOAEL = 0.7 mg/kg/day for males and females LOAEL = 7.0 mg/kg/day for males and females based on the increased incidence of testicular atrophy in males and chronic renal nephropathy in females, and decreased food consumption and body weight gain in both sexes
870.4200	Carcinogenicity-rat	NOAEL = 0.7 mg/kg/day LOAEL = 7.0 mg/kg/day based on decreased absolute body weights, body weight gains, and food consumption, decreased survival and earlier deaths in males, clinical signs (unkempt coat, hunched posture, rolling gait, piloerection, and/or walking on tip toes), cataracts, adverse effects on male reproductive organs (testicular degeneration, atrophied seminal vesicles, and decreased prostate weight), adverse effects on the exocrine pancreas in females (lobular/acinar cell atrophy, focal hyperplasia, and focal basophilic alteration), and an increased incidence of focal medullary cell hyperplasia of the adrenal gland in females. For further discussion, see Unit III.C.iii. of this final rule.
870.5100 Ames	Gene mutation	There was no mutagenic activity
870.5300 Mouse lymphoma	Gene mutation	There was no mutagenic activity
870.5395 Micronuclei	Cytogenetics	There was no evidence of chromosomal damage
870.7800	Immunotoxicity-rat	NOAEL = 5 mg/kg/day LOAEL = 15 mg/kg/day based on the decreased primary antibody (IgM) response to sheep red blood cells; decreased absolute and relative thymus weights; decreased body weight, food consumption and food efficiency at the high dose level. (While this study did not fully meet the requirements outlined in the Pesticide Assessment Guidelines Subdivision M OPPTS Series 152–18, because a NOAEL and LOAEL were determined, and found to be consistent with those from other repeat-dose studies, EPA determined that the study need not be repeated.)
	Special studies: Reporter Gene Assays Using Human Estrogen and Androgen Receptors, Non-guideline Study	No significant changes in the level of reporter activity was associated with any concentration of aviglycine HCl when tested with or without estrogenic or androgenic inhibitors. Aviglycine HCl was not cytotoxic at any concentration.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of

the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for aviglycine HCl used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR AVIGLYCINE HCL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF[1] and LOC for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–49 years of age)[2]	NOAEL = 0.2 mg/kg/day UF = 100 Acute RfD = 0.002 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.002 mg/kg/day	Rabbit Developmental Toxicity Developmental LOAEL = 0.4 mg/kg/day based on increased occurrence of developmental malformations (i.e. lobular agenesis of right lung) in the high and medium dose groups
Acute Dietary (General population including infants and children)	NOAEL = 0.2 mg/kg/day UF = 100 Acute RfD = 0.002 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.002 mg/kg/day	Endpoints from rabbit developmental study utilized as a worst case estimate, even though no acute toxicological endpoints resulting from a single dose were identified for populations other than females 13–49 years of age.
Chronic Dietary (All populations)	NOAEL= 0.8 mg/kg/day UF = 100 Chronic RfD = 0.008 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷FQPA SF = 0.008 mg/kg/day	Rat 2–generation Reproductive Toxicity LOAEL = 2.5 mg/kg/day based on decreased absolute body weight and body weight gain, and periportal hepatocellular vacuolation in the liver in F_0 and F_1 adult males.
Carcinogenicity (general population)	Non-linear Effects NOAEL = 0.7 mg/kg/day UF = 1,000 (includes 10X for database uncertainty[3]) Cancer RfD = 0.0007 mg/kg/day	FQPA considerations have been accounted for in discussions involving threshold non-carcinogenic effects[3]	Rat carcinogenicity LOAEL = 7.0 mg/kg/day based on increased incidence of benign testicular interstitial cell adenomas, benign adrenal pheochromocytoma, and adrenal medullary cell hyperplasia. Decreased number of animals with tumors, with benign tumors, and with malignant tumors were also observed. These decreases were evident as mammary fibroadenomas, thyroid C-cell adenomas, and anterior pituitary adenomas.

[1] The reference to the FQPA safety factor refers to any additional safety factor retained due to concerns unique to the FQPA. (See discussion on FQPA safety factor under Unit III.B. of this Final Rule.)

[2] The only acute endpoint was identified in pregnant rabbits; therefore, it applies to females 13–49 years of age, which includes potentially pregnant individuals. Fetal malformations observed in the developmental study are presumed to occur after maternal exposure to a single dose. Utilization of the acute developmental endpoint for other populations (general U.S., children 1–2 years old, etc.) substantially over-estimates risk because resultant malformations are unique to particular stages of fetal development and will not occur in these other populations.

[3] Data are inadequate for the determination of human carcinogenic potential. As a result, an additional 10X uncertainty factor (UF) was incorporated into hazard estimates for aviglycine HCl's threshold carcinogen effects in order to compensate for this inadequacy, increasing the overall UF to 1,000. When applied to the NOAEL of 0.7 mg/kg/day, it resulted in a cancer RfD of 0.0007 mg/kg/day. Justification for the utilization of an additional 10X uncertainty factor for database insufficiencies in cancer risk assessments included: (i) A cancer study in a second species (mouse) was absent, (ii) carcinogenic properties were associated with excessive toxicity, (iii) tumor evidence was inconsistent/equivocal, (iv) carcinogenicity potential was not confirmed with mutagenicity, endocrine, or immunotoxicity studies, and (v) resultant tumors were not associated with target organ (liver) or mechanism of action (pyridoxal 5′-phosphate-dependent enzyme inhibition).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.502) for the residues of aviglycine HCl, in or on a variety of raw agricultural commodities. Time-limited tolerances for apple and pear, and a temporary tolerance for the stone fruits crop group 12 (all expired on December 21, 2003), were established previously (July 12, 2001, 66 FR 36481, FRL–6790–7 (apple and pear) and July 12, 2001, 66 FR 36477, FRL–6788–7 (stone fruits crop group12)). In response to Valent BioSciences Corporation's petitions for permanent tolerances, an updated risk assessment was conducted by EPA to assess dietary exposures from aviglycine HCl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary risk assessment EPA used the Dietary

Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The residue of concern for the acute analysis is aviglycine HCl. The assessment assumed 100% of the proposed crops were treated, and that all treated crops had residues of concern at the requested tolerance levels. Anticipated residues were not used. Acute dietary risks for the 95th percentile of females 13–49 years old and the general U.S. population were minimal and did not exceed EPA's LOC. Acute dietary risks for children 1–2 years old technically exceeded EPA's LOC by a small margin. These risks represented a worst case scenario using toxicologic endpoints that only occurred *in utero*. Therefore, the calculated risks were illustrative at best. See footnote 2 of Table 2 for further explanation of acute endpoint utilized by EPA.

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The residue of concern for the chronic analysis is aviglycine HCl. Conservative chronic dietary assessments utilized tolerance-level concentrations for crops (i.e., 0.08 ppm for apple and pear and 0.170 ppm for stone fruits crop group 12, excepting cherries). Chronic dietary risk for the U.S. population, and children 1–2 years old did not exceed 1.6%, and 10.5%, respectively, of the chronic Population Adjusted Dose (cPAD, 0.008 mg/kg/day). Therefore, chronic dietary risks were minimal and did not exceed EPA's LOC.

iii. *Carcinogenicity*. Conflicting evidence for carcinogenicity has been reported for aviglycine HCl. Mutatgenicity, immunotoxicology, endocrine, subchronic, and chronic feeding studies strongly suggest that aviglycine HCl does not induce cancer. Effects observed in the carcinogenicity study, such as a threshold-response and reduction in the number of animals with tumors, with benign tumors, and with malignant tumors also support non-carcinogenic conclusions. In contrast, increased incidence of benign testicular interstitial cell adenomas, benign adrenal pheochromocytoma, and adrenal medullary cell hyperplasia suggest that aviglycine HCl may induce cancer. These effects, however, were seen only at an excessively toxic dose and may have been mediated indirectly through generic toxic mechanisms such as glutathione depletion and resultant oxygen radical-induced cell damage, rather than by aviglycine HCl. Dosing with excessive aviglycine HCl, therefore, weakened support for carcinogenic activity.

In the end, weight-of-evidence suggests that aviglycine HCl is non-carcinogenic. However, definitive statements of carcinogenicity can not be made at the current time, because information meeting rigorous criteria for defining it as non-carcinogenic (such as a second cancer study in a different species and strong non-conflicting evidence) is absent. These studies are not typically required in the testing of biochemical pesticides. To account for this, an additional database uncertainty factor of 10X was integrated with other UFs (100X) (increasing the overall uncertainty factor to 1,000) and the NOAEL established in the carcinogenesis study (0.7 mg/kg/day) to conservatively account for this deficiency (RfD = 0.0007 mg/kg/day).

Carcinogenic dietary risks for the U.S. population did not exceed 18.3% of the cancer RfD. The cancer risks from chronic exposure to aviglycine HCl in food and surface or ground water, therefore, were not unreasonable.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for aviglycine HCl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of aviglycine HCl.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health LOC.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to aviglycine HCl they are further discussed in the aggregate risk sections in Unit E.

Based on the GENEEC and SCI-GROW models, the EECs of aviglycine HCl acute peak exposures are estimated to be 0.582 parts per billion (ppb) for surface water and 0.00028 ppb for ground water. The EECs for chronic 90 day exposures are estimated to be 0.0194 ppb for surface water and 0.00028 ppb for ground water. Acute EECs did not exceed DWLOCs for the subpopulation females 13–49 years of age (49.05 ppb) or for the general U.S. population (47.32 ppb). Acute DWLOCs were not calculated for other subpopulations because of a lack of relevance to the sensitive developmental endpoint. EECs also did not exceed DWLOCs for any population considered in chronic (Table 4) or cancer estimates (Table 5). Aggregate cancer risks and the risks from aggregate acute or chronic exposure to aviglycine HCl in food and surface or ground water, therefore, are not unreasonable.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in

this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Aviglycine HCl is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether aviglycine HCl has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to aviglycine HCl and any other substances and aviglycine HCl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that aviglycine HCl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. EPA initially had concern for aviglycine HCl-induced prenatal and postnatal toxicity. This concern arose from 5 incidents of fetal toxicity (developmental malformations) that occurred at doses lower than that which induced maternal toxicity in rabbits (LOAEL = 0.4 mg/kg/day versus 0.7 mg/kg/day) and from an apparent increase in the severity of effects in rat offspring when compared to similarly dosed adults. A Degree of Concern Analysis was initiated to further investigate these issues and determine if an additional FQPA safety factor should be applied to risk equations to account for differential prenatal or postnatal sensitivities.

After investigation, the degree of concern was determined to be low for prenatal and postnatal aviglycine HCl-induced toxicity. This determination was justified for prenatal effects by:

i. The observation that the same number of similar fetal malformations in rabbits (5) also occurred at maternally toxic doses (0.7 mg/kg/day);

ii. The conclusion that 0.4 and 0.7 mg/kg/day dose differences in the rabbit study were more-than-likely without biological significance; and

iii. The utilization of the developmental endpoint (i.e., females aged 13–49), an endpoint relevant to prenatal toxicity, as a means for risk comparison. This determination also was justified for postnatal effects by:

a. The observation that toxic doses for adult rats were ultimately less than that for offspring (LOAEL = 2.5 versus 4.0 mg/kg/day);

b. The observation that increased severity of effects noticed in rat offspring may have been due to an inexplicable total loss of three litters;

c. The observation that offspring LOAELs were partially influenced by body weight decrements in parents; and

d. The observation that increased prenatal or postnatal sensitivities were not evident in rat developmental studies.

In summary, adequate characterization of prenatal and postnatal effects and the choice of a sensitive developmental endpoint for comparison to exposure data satisfied our concerns related to prenatal and postnatal effects.

3. *Conclusion*. There is a complete toxicity database for aviglycine HCl and exposure data are complete or are estimated based on data that reasonably accounts for potential prenatal and postnatal exposures to offspring and parents. A developmental NOAEL of 0.2 mg/kg/day was established in a rabbit study based on fetal effects at a dose of 0.4 mg/kg/day which was below the maternal LOAEL of 0.7 mg/kg/day. The maternal and developmental LOAELs were the same in the rat developmental study indicating no differences in susceptibility to aviglycine HCl toxicity. The multigeneration reproduction study also showed no differences in susceptibility of parents and their offspring (LOAEL = 2.5 mg/kg/day). All of these studies indicate that the special FQPA safety factor can be reduced to 1X for purposes of the current assessment.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable water exposure (mg/kg/day) = PAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable

data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to aviglycine HCl will occupy18.25 % of the aPAD for females 13–49 years old. As a worst case estimate, dietary risks for the general U.S. population and population subgroups were also estimated using the acute developmental endpoint (0.002 mg/kg/day). Exposures to aviglycine HCl were marginally above EPA's LOC for children 1–2 years old (163%), but below for the general U.S. population (32.4%). The risks posed to children 1–2 years old represented a worst case scenario using toxicologic endpoints that only occurred *in utero*. Therefore, the calculated risks were demonstrative at best. In addition, there is potential for acute dietary exposure to aviglycine HCl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit. The risks from acute aggregate exposure to aviglycine HCl in food and surface or ground water, therefore, are not unreasonable.

TABLE 3. —AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO AVIGLYCINE HCL

Population Subgroup	Dietary Exposure (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U. S. Population[1]	0.000648	32.4	0.582	0.00028	47.32
Females 13–49 years old	0.000365	18.25	0.582	0.00028	49.05
Children 1–2 years old[1]	0.003266	163			

[1] These exposure estimates and risk characterizations exaggerate the risk because the majority of individuals in the general population and in this subpopulation are not likely to be susceptible to aviglycine HCl's developmental effects (i.e., not likely to be pregnant).

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to aviglycine HCl from food will utilize 1.6% of the cPAD for the U.S. population, 10.1% of the cPAD for all infants (<1 year old), and 10.5% of the cPAD for children 1–2 years old, as shown in Table 4 of this unit. There are no uses for aviglycine HCl that result in chronic residential exposure to aviglycine HCl. There is potential for chronic dietary exposure to aviglycine HCl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit. The risks from chronic aggregate exposure to aviglycine HCl in food and surface or ground water, therefore, are not unreasonable.

TABLE 4. —AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO AVIGLYCINE HCL

Population Subgroup	Dietary Exposure mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.000128	1.6	0.0194	0.00028	0.276
All Infants (<1 year old)	0.000807	10.1	0.0194	0.00028	
Children 1–2 years old	0.000840	10.5	0.0194	0.00028	0.072
Children 3–5 years old	0.000503	6.3	0.0194	0.00028	
Children 6–12 years old	0.000186	2.3	0.0194	0.00028	
Youth 13–19 years old	0.000064	0.8	0.0194	0.00028	
Adults 20–49 years old	0.000049	0.6	0.0194	0.00028	
Adults 50+ years old	0.000072	0.9	0.0194	0.00028	
Females 13–49 years old	0.000058	0.7	0.582	0.00028	0.238

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Aviglycine HCl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).Aviglycine HCl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum

of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions generated from cancer endpoints (RfD = 0.0007 mg/kg/day) and chronic durations of exposure, EPA has concluded that exposure to aviglycine HCl from food will utilize 18.3% of the cancer RfD for the U.S. population. There are no uses for aviglycine HCl that result in carcinogenic residential exposure. There is, however, the potential for exposure to aviglycine HCl in drinking water. After calculating a cancer DWLOC and comparing it to EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cancer RfD, as shown in Table 5 of this unit. The cancer risks from chronic aggregate exposure to aviglycine HCl in food and surface water or ground water, therefore, are not unreasonable.

TABLE 5.—AGGREGATE CANCER RISK ASSESSMENT FOR EXPOSURE TO AVIGLYCINE HCL

Population Subgroup	Dietary Exposure mg/kg/day	% of Cancer RfD	Surface Water EEC (ppb)	Cancer DWLOC
U.S. Population	0.000128	18.3	0.0194	20.02

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to aviglycine HCl residues at the established tolerance levels.

IV. Other Considerations

A. Endocrine Disruptors

Incubation with aviglycine HCl did not change reporter gene activity induced by estradiol (estrogen) and dihydrotestosterone (androgen) and inhibited by 4-hydroxytamoxifen (anti-estrogen) and hydroxyflutamide (anti-androgen) at non-cytotoxic doses. Aviglycine HCl-induced pathologies of organs associated with the endocrine system were not observed consistently at non-toxic doses. Aviglycine HCl, therefore, was qualified as a non-endocrine disrupting compound.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography-fluorescence detector) that has been EPA-validated is available to enforce the apple and pear tolerance expression. The method may be requested from: Christine Olinger, Acting Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

In addition, enforcement methodologies are available to enforce the stone fruits crop group 12, excepting cherries, tolerance expression. Preliminary review of the proposed enforcement methods for residues of aviglycine HCl on stone fruits crop group 12, excepting cherries, has indicated that they appear to be suitable for enforcement purposes. Given that the methods for the stone fruits crop group 12, excepting cherries, reflect only minor modification of the EPA-validated method, and that the registrant has provided the Agency with concurrent fortification data to demonstrate that the methods are adequate for data collection purposes and with an independent Laboratory Validation, coupled with the EPA's preliminary review, EPA concludes that the methods are suitable as enforcement methods to support tolerances associated with this action. Those methods may be requested from: Sheryl K. Reilly, Chief, Biochemical Pesticides Branch, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, telephone number: (703) 308–8269; e-mail address: reilly.sheryl@epa.gov.

C. International Residue Limits

There are no Codex Alimentarius Commission (CODEX) maximum residue levels for residues of aviglycine HCl.

D. Conditions

Time-limited tolerances (May 7, 1997, 62 FR 24835, FRL–5713–5 and July 12, 2001, 66 FR 36481, FRL–6790–7) were established for the biochemical pesticide aviglycine HCl in connection with conditional section three registrations (June 13, 1997, 62 FR 32325, FRL–5721–4). All tolerances were time-limited because of the existence of a rat 2–generation reproduction study data gap. The time-limitation allowed for development and review of the data. Based on the available toxicological data, the thousandfold uncertainty factor, and the levels of exposure, the EPA determined at that time that there was a reasonable certainty that no harm would result to the U.S. population, including infants and children, from aggregate exposure to aviglycine HCl and its residues during the period of the time-limited tolerances. The rat 2–generation reproduction study, imposed by EPA to augment the results of the rat developmental toxicity study, was submitted to the Agency by Abbott Laboratories on September 27, 1999. It has now been reviewed and found by EPA to satisfy the 1997 condition of registration. Therefore, there currently are no data gaps associated with aviglycine HCl. A new database uncertainty factor applied to carcinogenic endpoints has now been established and is based on a review of submitted cancer data. This additional uncertainty factor has not affected current tolerance levels or crop uses. Additional cancer studies may be required in the future, however, should the registrant propose to alter tolerance levels, crop uses, application rates, pre-harvest intervals, or other factors important to human exposure.

V. Conclusion

Therefore, establishment of tolerances for residues of aviglycine HCl, in or on apple and pear at 0.08 ppm, and in or on the stone fruits crop group 12, excepting cherries, at 0.170 ppm, is appropriate.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a

tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0389 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 19, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0389, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input

by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 5, 2004.

Sheryl K. Reilly

acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.502 is amended by revising the section heading and paragraph (a) to read as follows:

§ 180.502 Aminoethoxyvinylglycine hydrochloride (aviglycine HCl); tolerances for residues.

(a) *General.* Tolerances are established for residues of aminoethoxyvinylglycine hydrochloride (aviglycine HCl) in or on the following food commodities:

Commodity	Parts per million
Apple	0.08
Fruit, stone, group 12, except cherry	0.170
Pear	0.08

* * * * *

[FR Doc. 04–3371 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 69, No. 32
Wednesday, February 18, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–059–1]

Mexican Fruit Fly; Interstate Movement of Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Mexican fruit fly regulations by removing a provision that allows regulated articles to be moved interstate from a regulated area without a certificate or limited permit if they are moved into States other than commercial citrus-producing States. Additionally, we are proposing to amend the regulations to remove references to quarantined States and to refer to regulated areas as quarantined areas. We are also proposing to make other changes to the regulations, including clarifying that an entity requiring the services of an inspector is responsible for the costs of services performed outside of normal business hours. These actions appear necessary to prevent the interstate spread of Mexican fruit fly and would make the Mexican fruit fly regulations more consistent with our other domestic fruit fly regulations.

DATES: We will consider all comments that we receive on or before April 19, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–059–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–059–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–059–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from regulated areas.

Applicability of Restrictions

Under our other fruit fly regulations in part 301 (*e.g.*, Mediterranean fruit fly [§§ 301.78–301.78–10], Oriental fruit fly [§§ 301.93–301.93–10], etc.), regulated articles must meet certain conditions in order to be eligible for interstate movement from quarantined areas, regardless of their destination. Under those regulations, a certificate or limited permit is required in most cases for the interstate movement of regulated articles; the certificate or limited permit serves to document that the regulated articles have been inspected, treated, or meet other conditions necessary to prevent the interstate spread of the particular fruit fly.

However, under the Mexican fruit fly regulations, the destination of the regulated articles is significant. Specifically, a certificate or limited permit is required only when the regulated articles are to be moved interstate into or through one of the States listed in § 301.64(b), which are States recognized by the Animal and Plant Health Inspection Service (APHIS) as commercial citrus-producing areas. (The States listed in § 301.64(b) are American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States.) These provisions allow regulated articles to be moved interstate without restriction under the regulations as long as those articles are not moved into or through any of the commercial citrus-producing States listed in § 301.64(b).

While citrus is an important host of Mexican fruit fly, other potential host material for Mexican fruit fly (*e.g.*, apples, mangoes, and peaches) is present in States that are not commercial citrus-producing States. Thus, the unrestricted movement of regulated articles into those States may allow for the spread of Mexican fruit fly into noninfested areas of the United States.

Therefore, we propose to remove those provisions that make it possible for regulated articles from regulated areas to be moved interstate to States other than commercial citrus-producing States without restriction. In addition to addressing the ongoing risks associated with unrestricted movement, this change would make the Mexican fruit fly regulations consistent with our other fruit fly regulations in part 301.

As a result of this change, all regulated articles that originate within a quarantined area would, when moving interstate from a quarantined area, have to be accompanied by a certificate or limited permit. The regulations in § 301.64–5(a) provide that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that certain specified conditions have been met. A

limited permit may be issued by an inspector for interstate movement of a regulated article in lieu of a certificate when, among other things, the inspector determines that the regulated article is to be moved to a specified destination for specified handling, utilization, processing, or treatment that will destroy life stages of the pest. Certificates and limited permits may also be issued by any person who has entered into and is operating under a compliance agreement after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.64–5(a) or (b).

Regulated Areas

In addition to the differences in interstate movement requirements described above, the Mexican fruit fly regulations also differ from the other fruit fly regulations in part 301 in their two-step approach to the designation of regulated areas. In § 301.64(a), States affected by Mexican fruit fly are designated as quarantined States, then, in § 301.64–3, specific areas within those quarantined States are designated as regulated areas. Our other fruit fly regulations in part 301 simply list regulated areas without designating quarantined States, and refer to those regulated areas as ''quarantined areas.'' To make the Mexican fruit fly regulations consistent with our other fruit fly regulations, we propose to amend the regulations in part 301 to remove references to quarantined States and to refer to regulated areas as quarantined areas.

Interstate Movement of Regulated Articles From Quarantined Areas

The regulations in § 301.64–4 provide that regulated articles may be moved interstate from regulated areas if they are accompanied by a certificate or limited permit issued and attached in accordance with §§ 301.64–5 and 301.64–8. Regulated articles that are moved from outside regulated areas and that are accompanied by a waybill that indicates the point of origin may be moved interstate through a regulated area without a certificate or limited permit provided that they are moved directly through the regulated area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

We propose to amend § 301.64–4 to provide that regulated articles may also be moved interstate from regulated areas by the U.S. Department of Agriculture for experimental or scientific purposes. Such articles would be moved in accordance with a departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of the Mexican fruit fly. These provisions for interstate movement with a departmental permit are present in our other fruit fly regulations in part 301, so we are proposing to add them to our Mexican fruit fly regulations to make those regulations consistent with our other fruit fly regulations.

Costs and Charges

Section 301.64–9 provides that the services of an inspector shall be furnished without cost. However, inspectors are available without cost only during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). At all other times, the user is responsible for all costs and charges arising from the inspection process. This is stated explicitly in other fruit fly regulations in part 301, but not in § 301.64–9. Therefore, we propose to amend § 301.64–9 to clarify this fact.

Miscellaneous

In several places in the regulations, we provide addresses to which persons may write to obtain forms or information regarding compliance agreements, inspection services, or approvals related to the use of irradiation as a treatment for regulated articles. The addresses currently provided in the regulations are no longer accurate, so we are proposing to amend the regulations to bring those addresses up to date.

We propose to add a definition for *departmental permit* to the list of definitions in § 301.64–1 in order to make the Mexican fruit fly regulations consistent with our other fruit fly regulations.

Finally, in § 301.64–10(g)(9), we incorrectly identify the Mexican fruit fly as the Mediterranean fruit fly. We propose to correct that error.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The proposed rule would amend the Mexican fruit fly regulations by removing a provision that allows regulated articles to be moved interstate from a regulated area without a certificate or limited permit if they are moved into States other than commercial citrus-producing States. Currently, only Cameron, Hidalgo, and Willacy Counties in Texas are designated as regulated areas in the regulations.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. We expect that the entities most likely to be affected by the proposed changes would be citrus growers and packinghouses located within quarantined areas. In 1997, the latest census year, citrus fruit was produced on 531 farms in Texas. Approximately 98 percent of citrus farms had gross sales of less than $750,000 and thus are considered small entities according to the size standards set by the Small Business Administration (SBA).

Impact on Affected Industries in Texas

As noted previously, three counties in the Lower Rio Grande Valley of Texas—Cameron, Hidalgo, and Willacy—are designated as regulated areas. The Mexican fruit fly protocol for Texas calls for a trapping program to monitor those areas; under the protocol, the detection of one wild Mexican fruit fly triggers the application of bait sprays or the aerial release of sterile flies around the fly capture. Fruit destined for shipment to commercial citrus-producing States must be certified as free of the Mexican fruit fly, either through inspection or following the application of an authorized post-harvest treatment.

Within the regulated area of Texas there are approximately 540 citrus growers operating on 30,000 acres producing $31 million worth of citrus annually, and 5 packinghouses.[1] Seventy five percent of the citrus growers produce grapefruit while the remaining 25 percent produce oranges. Approximately 80 percent of all citrus growers use one of the 5 packinghouses, while the remaining 20 percent sell their citrus locally. The 5 packinghouses currently ship approximately 35 percent of the citrus to California and 65 percent to States that are not commercial citrus-producing States.[2] Currently only 5 to 10 percent of all citrus shipped annually to citrus-producing regions (mainly California) are treated for Mexican fruit flies using methyl bromide fumigation. The cost of treatment generally comprises less than 4 percent of the citrus wholesale value.[3]

[1] Texas Crop Production Summary with Values 2001–2002. NASS USDA report, Jerry Ramirez.

[2] John McClung, Texas Citrus Growers Association. Personal communications, June 28, 2003.

[3] It is estimated that it costs $0.25 to treat a 40 pound carton of citrus with a worth of

The proposed rule would require that all citrus and other host crops moved interstate to States that are not commercial citrus-producing States be accompanied by a limited permit or certificate issued by an APHIS inspector, just as is currently required for host crops moved to commercial citrus-producing States. The provisions of this proposed rule would primarily affect the packinghouses in the regulated area in that any overtime cost that is incurred by APHIS inspectors for supervising post-harvest treatments at the packinghouses would now have to be paid for by owners of the facilities. Currently, as a result of the small number of inspectors working overtime, this cost is borne by APHIS. It is estimated that one APHIS inspector will be required at each of the five Texas packinghouses for approximately 16 weeks during the citrus harvest period. APHIS has estimated that each of these inspectors will work approximately 53 hours in overtime supervision during this 16-week period. At $28.11 per hour, each citrus packinghouse will be responsible for, on average, $1,500 in overtime charges for the inspectors. Assuming these charges stay constant with more stringent interstate movement requirements, we estimate that the five Texas packinghouses would incur approximately $7,500 per year in total overtime charges for citrus fruits moving to commercial citrus-producing States.

Similarly, additional charges may also be incurred by producers or packinghouses for the services of an APHIS inspector in monitoring the post-harvest treatment of citrus for shipment to States other than commercial citrus-producing States if services are provided beyond the normal working hours. If, as estimated above, the overtime costs associated with the interstate movement of the 35 percent of fruit moving to commercial citrus-producing States would be $7,500, then a rough estimate of the overtime charges that may be incurred in connection with the interstate movement of the remaining 65 percent of fruit would be $14,000. The total overtime cost to the producers or packinghouses for APHIS supervision would be approximately $21,500 per year.

Producers of host crops may also incur additional costs for post-harvest treatment if they wish to send their fruit to States other than commercial citrus-producing States and their fruit is found to be infested. Under the proposed rule, host crops moving interstate to such States, like fruit moved to commercial citrus-producing States, would be subject to treatment if found to be infested with Mexican fruit flies. The current fumigation facilities in place can treat approximately 5 to 20 percent of the citrus moving interstate. The amount of fruit that may require treatment as a condition of movement to States other than commercial citrus-producing States is not known and would vary with the infestation levels. However, assuming that (1) 65 percent of the $31 million worth of citrus is shipped to these States, (2) that the proportion of these fruits that would require treatment would be the same percentage as that of fruits currently shipped to commercial citrus-producing States (about 5–10 percent), and (3) that treatment costs comprise less than 4 percent of the wholesale value of citrus, the additional cost of treatment to producers is estimated to be $40,000 to $80,000. In sum, based on past infestation rates, the impact of this proposed rule on the Texas citrus industry could range between $61,500 and $101,500 in additional yearly treatment costs and APHIS overtime costs for pre- and post-harvest monitoring (table 1).

TABLE 1.—POSSIBLE TEXAS OVERTIME AND TREATMENT COSTS

	Yearly costs
Current pre- and post-harvest APHIS monitoring (for movement to commercial citrus-producing States)	$7,500
Future pre- and post-harvest APHIS monitoring (for movement of citrus to non-citrus States)	14,000
Treatment (methyl bromide)	40,000–80,000
Total cost	61,500–101,500

Summary

This proposed rule could potentially have a negative impact on the Texas citrus industry, as producers who wish to move regulated articles, including citrus fruit, to any State—not just commercial citrus-producing States—would now have to obtain a certificate or limited permit before moving the articles interstate. Producers and/or packinghouses would have to incur the cost of fumigation treatment along with overtime costs incurred by APHIS in monitoring treatments. The extent of the impact would depend on the level of pest infestation. It is expected that the percentage (5–10 percent) of citrus fruits requiring treatment for movement to States that are not commercial citrus-producing States would be the same as that of fruits currently shipped to commercial citrus-producing States. The impact on the industry is expected to be small ($40,000 to $80,000 annual treatment costs), as the treatment costs comprise less than 4 percent of the wholesale value of the citrus and only 5 to 10 percent of the citrus require treatment.[4]

The Texas citrus industry would also have to incur the estimated $7,500 per year in overtime costs associated with PPQ treatment supervision at the 5 packinghouses for fruit moved to commercial citrus-producing States. These costs will either be absorbed by the industry or passed on to consumers of the fruit. Additionally, it is estimated that producers of citrus fruit moving to States other than commercial citrus-producing States could also incur overtime costs of $14,000. In sum, based on past infestation rates, the impact of this proposed rule on the Texas citrus industry could range between $61,500 and $101,500 in additional treatment costs and overtime charges for APHIS pre- and post-harvest monitoring.

The forgone costs or benefits of averting a Mexican fruit fly outbreak are substantial. The establishment of the Mexican fruit fly in the United States could cost producers and exporters about $900 million in losses annually.[5]

approximately $7.50 to $9.00. Source: Robert Martin, Texas Citrus packing facility owner. Personal communications, June 28, 2003.

[4] It is estimated that 65 percent of the $31 million worth of Texas citrus produced is transported to States that are not commercial citrus producing States. Approximately 5 to 10 percent of the $20.15 million worth of fruit may require treatment based on past infestation levels. The total treatment cost is about 4 percent of the $1 to 2 million, or $40,000 to $81,000.

[5] Lottie Erikson (2000). ''Economic Analysis of Options for Eradicating Mexican Fruit Fly (*Anastrepha ludens*) from the Lower Rio Grande Valley of Texas.'' Policy and Program Development,

Continued

This amount is comprised of (1) field control costs, (2) field losses after Malathion use, (3) cost of quarantine compliance treatments, and (4) losses due to quarantine treatment damage. The costs associated with the proposed additional restrictions on the interstate movement of regulated articles are surpassed by the benefits of averting a large scale Mexican fruit fly outbreak.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03–059–1. Please send a copy of your comments to: (1) Docket No. 03–059–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the Mexican fruit fly regulations by removing a provision that allows regulated articles to be moved interstate from a regulated area without a certificate or limited permit if they are moved into States other than commercial citrus-producing States. We are also proposing to make other changes to the regulations, including clarifying that an entity requiring the services of an inspector is responsible for the costs of services performed outside of normal business hours. Implementation of this proposed rule will require us to engage in certain information collection activities, in that certain articles may not be moved interstate from the quarantined area unless they are accompanied by a certificate or limited permit. A certificate or limited permit may be issued by an inspector (*i.e.*, an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.64 hours per response.

Respondents: Texas citrus growers and State plant health officials.

Estimated annual number of respondents: 825.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 825.

Estimated total annual burden on respondents: 528 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.64 would be revised to read as follows:

§ 301.64 Restrictions on interstate movement of regulated articles.

No person shall move any regulated article interstate from any quarantined area except in accordance with this subpart.[1] [2]

3. Section 301.64–1 would be amended by removing the definition of *regulated area* and by adding, in alphabetical order, definitions for *departmental permit* and *quarantined area,* to read as follows:

Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[2] Regulations concerning the movement of plant pests, including live Mexican fruit flies, in interstate commerce are contained in part 330 of this chapter.

§ 301.64–1 Definitions.

* * * * *

Departmental permit. A document issued by the Administrator in which he or she affirms that the interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.64–4(b) of this subpart.

* * * * *

Quarantined area. Any State, or any portion of a State, listed in § 301.64–3(c) or otherwise designated as a quarantined area in accordance with § 301.64–3(b).

* * * * *

§ 301.64–3 [Amended]

4. Section 301.64–3 would be amended as follows:

a. In the section heading, by removing the word ''Regulated'' and adding the word ''Quarantined'' in its place.

b. In paragraph (a), introductory text, by removing the word ''quarantined'' each time it appears, and by removing the word ''regulated'' each time it appears and adding the word ''quarantined'' in its place.

c. In paragraph (a)(2), by removing the word ''regulated'' and adding the word ''quarantined'' in its place.

d. In paragraph (b), by removing the word ''quarantined'', by removing the word ''nonregulated'' both times it appears and adding the word ''nonquarantined'' in its place, and by removing the words ''regulated area'' and adding the words ''quarantined area'' in their place.

e. In paragraph (c), introductory text, by removing the word ''regulated'' and adding the word ''quarantined'' in its place.

5. In § 301.64–4, the section heading, the introductory text of the section, and paragraph (b) would be revised and a new paragraph (c) would be added to read as follows:

§ 301.64–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions: [3]

* * * * *

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mexican fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is clearly indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for normal traffic conditions, such as traffic lights or stop signs; or

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of Mexican fruit fly; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in the container.

6. In § 301.64–6(a), footnote 6 would be revised to read as follows:

§ 301.64–6 Compliance agreement and cancellation thereof.

(a) * * * [6]

7. In § 301.64–7(a), footnote 7 would be revised to read as follows:

§ 301.64–7 Assembly and inspection of regulated articles.

(a) * * * [7]

* * * * *

8. Section 301.64–9 would be revised to read as follows:

§ 301.64–9 Costs and charges.

The services of an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

9. Section 301.64–10 would be amended as follows:

a. In paragraph (g)(3)(i), by revising footnote 10 to read as set forth below.

b. By revising paragraph (g)(7) to read as set forth below.

c. In paragraph (g)(9), by removing the word ''Mediterranean'' and adding the word ''Mexican'' in its place.

§ 301.64–10 Treatments.

* * * * *

(g) * * *

(3) * * *

(i) * * * [10]

* * * * *

(7) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to a local office of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at *http://www.aphis.usda.gov/ppq/.* Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (g)(1) of this section.

* * * * *

Done in Washington, DC, this 11th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–3429 Filed 2–17–04; 8:45 am]

BILLING CODE 3410–34–P

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[6] Compliance agreement forms are available without charge from local offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at *http://www.aphis.usda.gov/ppq/.*

[7] Inspectors are assigned to local offices of Plant Protection and Quarantine, which are listed in telephone directories. Information concerning such local offices may also be obtained on the Internet at *http://www.aphis.usda.gov/ppq/.*

[10] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to a local office of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at *http://www.aphis.usda.gov/ppq/.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[RCRA–2003–0005; FRL–7624–7]

RIN 2050–AE23

Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials; Reopening of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for the proposed rule entitled ''Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials,'' (CPG V) which appeared in the **Federal Register** on December 10, 2003 (68 FR 68813). The initial public comment period for this proposed rule ended on February 9, 2004. The purpose of this notice is to reopen the comment period to end on March 19, 2004.

DATES: EPA will accept public comments on the CPG V proposed rule until March 19, 2004.

ADDRESSES: Comments may be submitted by mail to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. Comments may also be submitted electronically or through hand delivery/courier; follow the detailed instructions as provided below in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information on the CPG V proposed rule, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of the CPG V proposed rule, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** for the CPG V proposed rule, which was issued on December 10, 2003 (68 FR 68813). In that document, EPA proposed to revise the current compost designation to include compost made from manure or biosolids and to designate fertilizers made from recovered organic materials. EPA also proposed to consolidate all compost designations under one item called ''compost made from recovered organic materials.'' During the initial public comment period, which ended on February 9, 2004, EPA received a request to extend the comment period of the CPG V proposed rule by 30 days. A copy of this request has been placed in the EPA Docket for the CPG V proposed rule. Since the initial public comment period has already ended, EPA is reopening, rather than extending, the comment period for 30 days. EPA is hereby reopening the CPG V proposed rule comment period, which will end on March 19, 2004.

In the notices section of today's **Federal Register**, EPA is also reopening the comment period of a related document published in the **Federal Register** on December 10, 2003 (68 FR 68919), the ''Recovered Materials Advisory Notice V.''

How and to Whom Do I Submit Comments on the CPG V Proposed Rule?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2003–0005. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2003–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Disk or CD–ROM. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005.

By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Docket ID No. RCRA–2003–0005. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays).

Dated: February 10, 2004.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 04–3449 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7624–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Florence Land Recontouring Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Florence Land Recontouring Landfill Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. Within the NPL, this Site is listed as being located in the Township of Florence. However, portions of the Site are also located in the Townships of Mansfield and Springfield, Burlington County, New Jersey. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of New Jersey, through the Department of Environmental Protection (NJDEP), have determined that all appropriate remedial actions have been implemented at the Site and no further fund-financed remedial action is appropriate under CERCLA. Moreover, EPA and NJDEP have determined that the Site poses no significant threat to public health or the environment.

DATES: The EPA will accept comments concerning its proposal for deletion until March 19, 2004.

ADDRESSES: Comments should be mailed to: Mark Austin, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on the Site is contained in the Administrative Record and is available for viewing by appointment only at: U.S. EPA Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866. Hours: 9 a.m. to 5 p.m.–Monday through Friday. Contact the Records Center at (212) 637–4308.

Information on the Site is also available for viewing at the Information Repository located at: Florence Township Library, 1350 Hornberger Ave, Roebling, New Jersey 08554, (609) 499–0143.

FOR FURTHER INFORMATION CONTACT: Mark Austin, Remedial Project Manager, U.S. EPA, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3954; fax: (212) 637–4429; e-mail: *austin.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The United States Environmental Protection Agency (EPA) Region II announces its intent to delete the Florence Land Recontouring Landfill Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The NPL is a list maintained by EPA of Sites that EPA has determined to present a significant risk to public health or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund (Fund).

The Site is located on Cedar Lane, in the townships of Florence, Mansfield and Springfield, Burlington County, New Jersey. The property encompasses approximately 60 acres. Out of the 60 acres, the area which contains the actual landfilled wastes is 29 acres. Florence Land Recontouring, Inc. operated the Site from 1973 to 1981. The Site was utilized as a solid waste landfill to accept sanitary and industrial (non-chemical) waste, including septage and sewage sludge.

At the Site, a Remedial Investigation and Feasibility Study (RI/FS) was conducted by an engineering consulting firm under the direction of the NJDEP. EPA, along with the NJDEP, selected and implemented the remedy. The NJDEP approved an operation and maintenance plan and currently implements it.

EPA will accept comments concerning its intent to delete this Site for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP established the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the NJDEP, will consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

EPA will not conduct any further activities at this Site because EPA believes that the Site poses no significant threat to public health or to the environment. If new information becomes available which indicates the need for further action, EPA may initiate such actions under § 300.425(e)(3) of the NCP. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

1. The Site was listed on the NPL in September 1984 based on investigations by NJDEP and the County of Burlington, New Jersey.

2. During 1985 and 1986, a Remedial Investigation and Feasibility Study (RI/FS) was conducted by Black and Veatch, an engineering consulting firm under the direction of the NJDEP, to characterize and evaluate Site contamination. NJDEP is the lead Agency for this site and EPA is the support Agency.

3. EPA issued a comprehensive Record of Decision (ROD) for the site on June 27, 1986.

4. The construction phase of the remediation was completed and found to be consistent with the ROD in a Preliminary Closeout Report dated September 25, 1998.

5. In March of 1994, the NJDEP approved an operation and maintenance (O&M) plan. The O&M activities are being performed by NJDEP, Burlington County, as a NJDEP contractor, and a Potentially Responsible Party (PRP), specifically for removing and disposal of collected leachate. EPA and NJDEP believe that O&M continues to be adequately performed by these parties.

6. EPA approved the Remedial Action report on September 28, 2001. The Remedial Action report contains detailed information on the construction and demonstrates that the remedy is operational and functional.

7. NJDEP began a five-year monitoring period for the Site in September 1997. Groundwater and surface water data continues to be collected. To date, no volatile or semi-volatile compounds have been detected. Contamination levels in the monitoring wells have declined during the monitoring period. Methane levels continue to be generally low.

8. EPA recommends the deletion of the Site and has prepared the relevant documents.

9. The NJDEP has concurred with the deletion decision in a letter dated September 19, 2002.

10. Concurrent with this national Notice of Intent to Delete, a notice has been published in a local newspaper and appropriate notice has been distributed to federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion, which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

11. EPA placed all relevant site documents in the Site information repositories identified above.

12. Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the deletion. EPA will prepare a Responsiveness Summary, if appropriate, for comments received during the public comment period which will address the concerns raised. The Responsiveness Summary will be made available to the public at the information repositories. If, after review of all public comments, EPA determines that the deletion from the NPL is appropriate, EPA will publish a final notice of deletion in the **Federal Register**. Deletion of the Site does not actually occur until the final Notice of Deletion is published in the **Federal Register**.

Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. Deletion from the NPL does not alter EPA's right to take appropriate enforcement actions. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Site Deletion

The following summary provides EPA's rationale for deletion of the Florence Land Recontouring Landfill Superfund Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

Background

The Florence Land Recontouring Landfill Superfund Site is listed in the NPL as located in the Township of Florence, Burlington County, New Jersey. However, the Site extends into Mansfield and Springfield Townships. The property boundary encompasses approximately 60 acres. Out of the 60 acres, the area which contains the actual landfilled wastes is 29 acres. Florence Land Recontouring, Inc. operated the Site from 1973 to 1981. The Site was utilized as a solid waste landfill to accept sanitary and industrial (non-chemical) waste, including septage and sewage sludge. In 1975, an investigation by the NJDEP disclosed chemical waste disposal at the Site. In July 1981, Florence Land Recontouring, Inc. submitted a final closure plan and operations terminated in November 1981. The Site was proposed for listing on the NPL in September 1983 and was added to the NPL in September 1984.

Selected Remedy

During 1985 and 1986, a Remedial Investigation and Feasibility Study (RI/FS) was conducted. The RI/FS revealed that the main source of environmental concern at the Site was the reported deposition of hazardous waste, including phthalates, heavy metals and vinyl chloride monomers. Sampling and analysis of leachate in wastefill wells indicated the presence of volatile organic compounds and heavy metals.

On June 27, 1986, EPA, with the NJDEP's concurrence, issued a Record of Decision (ROD). The major components of the selected remedy consisted of the construction of a synthetic membrane and clay composite cap, construction of a circumferential soil/bentonite slurry containment wall, construction of an up-gradient groundwater interceptor system, construction of a new storm water management system, leachate treatment and disposal at a publicly owned treatment works, gas collection and treatment, removal and disposal of lagoon liquids and sediments, construction of a fence with warning signs, and supplemental sampling of groundwater, surface water, and sediments during design.

Cleanup

The landfill cap construction began in April 1993. The work was performed by a NJDEP contractor using state and federal funds. All construction for the Site required by the ROD was completed in August 1994. EPA issued a Preliminary Closeout Report on September 25, 1998. The only ongoing activities consist of the operation and maintenance of the cap and various systems, including the gas and leachate collection systems and the groundwater interceptor system. Landfill gas is removed from the landfill at an average of 40 cubic feet per minute. Leachate generation has slowed from an average of 10,000 gallons per day when the collection system was first installed to an average of 30,000 gallons per week and is expected to continue to diminish.

Groundwater and surface water monitoring were conducted annually for five years in accordance with the NJDEP's 1997 five-year monitoring plan, and soil gas monitoring is conducted quarterly in the capped and surrounding areas. Methane levels have generally been low. No volatiles or semi-volatiles have been detected.

Post-construction sampling and testing results indicate to EPA and the NJDEP that the construction was properly implemented, consistent with the requirements of the ROD. This information is also contained in a Remedial Action report approved by EPA.

The cleanup of the Site was performed in compliance with ''clean closure'' requirements and consistent with the Resource Conservation and Recovery Act of 1976, as amended, CERCLA, as amended, and the NCP.

Hazardous substances remain at this Site above health-based levels. It is the policy of EPA (OSWER Directive 9355.7–03B–P) to review remedial actions selected in RODs signed prior to the enactment of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The first Five-Year review will be completed prior to September 2003.

Major Community Involvement Activities

Public participation activities for the Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42

U.S.C. 9617. All documents and information which EPA relied on or considered in recommending that no further activities are necessary at the Site, and that the Site can be deleted from the NPL, are available for the public to review at the information repositories.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the NJDEP, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL.

In a letter dated September 19, 2002, the NJDEP concurred with EPA.

Additionally, although EPA's ROD did not require institutional controls, NJDEP independently requires institutional controls, in the form of a deed notice, for this landfill under its landfill closure and post-closure regulations (New Jersey Solid Waste Regulations, N.J.A.C 7:26–2A.9). This deed notice would remain in effect in perpetuity, and would require prior approval from the NJDEP before any future disturbance at the landfill.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 9, 2003.

Anthony Cancro,

Acting Regional Administrator, Region 2.

Editorial note: This document was received at the Office of the Federal Register on February 11, 2004.

[FR Doc. 04–3368 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61, and 69

[CC Docket No. 96–128; DA 03–4027]

Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; comment periods extended.

SUMMARY: On February 3, 2004, the Commission granted a request by Evercom *et al.* to extend the deadlines for filing comments and reply comments regarding a Petition For Rulemaking or, in the Alternative, Petition To Address Referral Issues In A Pending Rulemaking (*Wright Petition*) filed in CC Docket No. 96–128.

DATES: Comments are due on or before March 10, 2004, and reply comments are due on or before March 31, 2004.

ADDRESSES: Federal Communications Commission, Marlene H. Dortch, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* Supplementary Information for information on additional instructions for filing paper copies.

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, Wireline Competition Bureau, 202–418–1520.

SUPPLEMENTARY INFORMATION: On December 31, 2003, the Commission released the *Wright Public Notice* seeking comment on a Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In a Pending Rulemaking (*Wright Petition*) filed by Martha Wright and other prison inmate and non-inmate petitioners. The *Wright Public Notice* stated that comments would be due 20 days after publication of the public notice in the **Federal Register**, and reply comments would be due 30 days after **Federal Register** publication. The **Federal Register** published the *Wright Public Notice* on January 20, 2004. *See* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Notice of Proposed Rulemaking, 69 FR 2697, January 20, 2004.

On January 26, 2004, Evercom Systems, Inc., T–NETIX, Inc., and Corrections Corporation of America (CCA) (jointly, ''commenters'') filed a joint motion to extend the deadlines for filing comments and reply comments in this proceeding. It is the policy of the Commission that extensions of time are not routinely granted. *See* 47 CFR 1.46(a). In this instance, however, the Bureau finds that the commenters have shown good cause for an extension of the deadline for filing comments and reply comments in this proceeding. Because of the complexity of the issues, the related necessary economic analysis, and the length of the pleadings, a limited extension is granted so that parties may file comments by March 10, 2004, and reply comments by March 31, 2004. This matter shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1206. All procedures for filing comments discussed in the **Federal Register** publication of the *Wright Public Notice* remain in effect. *See* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Notice of Proposed Rulemaking, 69 FR 2697, January 20, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–3463 Filed 2–17–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 32
Wednesday, February 18, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on March 3, 2004, in Orick, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan (NWFP).

DATES: The meeting will be held from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Redwood National Park Headquarters Conference Room, 121200 Highway 101, Orick, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–1137; e-mail *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Regional Ecosystem Office (REO) update; (2) U.S. Fish and Wildlife Service summary and update on Findings in the Pacific Fisher, Marbled Murrelet, and Northern Spotted Owl Status Reviews; (3) update on planning for a Province fire ecology/fuels treatment workshop; (4) presentation on the Draft King Range Environmental Impact Statement; (5) Aquatic Conservation Subcommittee report and recommendations; (6) Redwood National Park issues, including Second Growth Management Plan, Fire Management Plan, and a field visit and discussion on Redwood Creek Estuary restoration; (7) presentation on the Healthy Forests Restoration Act; (8) agency and constituency updates; and (9) public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 5, 2004.

James D. Fenwood,

Forest Supervisor.

[FR Doc. 04–3417 Filed 2–17–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Mississippi

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Mississippi for review and comment.

SUMMARY: It is the intention of NRCS in Mississippi to issue twelve (12) revised conservation practice standards in Section IV of the FOTG. The revised standards are; Aquaculture Ponds (Code 397), Bedding (Code 310), Dike (Code 356), Irrigation Canal or Lateral (Code 320), Irrigation Field Ditch (Code 388), Irrigation Regulating Reservoir (Code 552), Irrigation Storage Reservoir (Code 436), Irrigation System, Surface and Subsurface (Code 443), Pumping Plant (Code 533), Structure for Water Control (Code 587), Surface Drainage, Field Ditch (Code 607), and Watering Facility (Code 614).

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service (NRCS), Suite 1321 McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269. Copies of the standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Mississippi will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Mississippi regarding disposition of comments received and a final determination of changes will be made.

Dated: January 29, 2004.

Homer L. Wilkes,

State Conservationist, Jackson, MS.

[FR Doc. 04–3456 Filed 2–17–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public and a draft agenda of the meeting is attached.

EFFECTIVE DATES: The meeting will convene on Wednesday, March 10, 2004, at 8:30 a.m., and continue until 5 p.m.; resume Thursday, March 11, 2004, from 8:15 a.m. to 4:30 p.m. Individuals with written materials, and those who have requests to make oral presentations, should contact the Natural Resources Conservation Service (NRCS), at the address below, on or before February 28, 2004.

ADDRESSES: The meeting will be held at the Sheraton Imperial Hotel, Page Road, Research Triangle Park, North Carolina 27709; telephone: (919) 941–5050. Written material and requests to make oral presentations should be sent to Elvis Graves, Environmental Protection Agency, 109 T.W. Alexander Drive, Mail Code C504–03, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION, CONTACT: Questions or comments should be

directed to Elvis Graves, acting Designated Federal Official; telephone: (919) 541–5436; fax: (919) 541–0072; e-mail: *elvis.graves@usda.gov* or *graves.elvis@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the AAQTF, including any revised agendas for the March 10 and 11, 2004, meeting that occur after this Federal Register notice is published, may be found on the World Wide Web at *http://aaqtf.tamu.edu.*

Draft Agenda of the March 10 and 11, 2004, Meeting of the AAQTF

Welcome to North Carolina;
Local and NRCS officials;
Discussion of December Minutes;
Presentation/Discussion of Documents to be Approved by Conclusion of Meeting;
Subcommittee Presentations;
Emerging Issues Committee Report;
Research Committee Report;
Policy Committee Report;
Education/Technology Transfer Committee Report;
Local Research Presentations;
North Carolina State University—Field Research;
PM–NAAQS—Air Quality Impacts from Agriculture;
PM—Implementation Issues;
Emerging Technologies to Address Air Quality;
EPA and Industry Compliance Agreement—Update;
NC GreenPower Initiative;
Next Meeting, Time/Place;

Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Mr. Graves no later than February 27, 2004. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 30 copies to Elvis Graves no later than March 1, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Elvis Graves.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on February 9, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04–3457 Filed 2–17–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 040209047–4047–01]

RIN 0693–ZA56

Advanced Technology Program

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice and announcement of Public Meetings (Proposers' Conferences).

SUMMARY: NIST's Advanced Technology Program (ATP) announces that it will hold a single fiscal year 2004 ATP competition and is soliciting proposals for financial assistance. ATP also announces that it will hold public meetings (Proposers' Conferences) for all interested parties. ATP is soliciting proposals in all technology areas. ATP provides cost-shared multi-year funding to single companies and to industry-led joint ventures to accelerate the development of challenging, high risk technologies that promise significant commercial payoffs and widespread benefits for the nation. This government-industry partnership aids companies in accelerating the development of emerging or enabling technologies that lead to revolutionary new products and industrial processes and services that can compete in rapidly changing world markets. ATP challenges the research and development (R&D) community to take on higher technical risk with commensurately higher potential payoffs for the nation than they would otherwise pursue.

DATES: The due date for submission of proposals is Wednesday, April 14, 2004. All hand-delivered or electronically submitted proposals must be received by 3 p.m. Eastern Time on April 14, 2004; all other proposals must be postmarked by April 14, 2004, and received no later than 3 p.m. Eastern Time Wednesday, April 28, 2004. Proposals submitted through guaranteed overnight carriers are deemed to be postmarked on the date they are delivered to the carrier.

ADDRESSES: Proposals must be submitted to ATP as follows:

Paper submission: Send to National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Stop 4701, Gaithersburg, MD 20899–4701.

Electronic submission: Electronic Submission System (ESS)—Use the downloadable forms and the Forms Viewer at no cost at *http://ess.atp.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Lambis at 301–975–4447 or by e-mail at *barbara.lambis@nist.gov.*

SUPPLEMENTARY INFORMATION:

Additional Information: The full funding opportunity announcement for this request for proposals is available at *http://www.grants.gov.* The full funding opportunity announcement text can be accessed on the ATP Web site at *http://www.atp.nist.gov.* To request a copy of the ATP Proposal Preparation Kit call ATP at 1–800–ATP–FUND (1–800–287–3863). The Kit is also available on the Internet on the ATP Web site *http://www.atp.nist.gov* or through the electronic submission Web site at *http://ess.atp.nist.gov.* Note that ATP is mailing the Kit to all individuals whose names are currently on the ATP mailing list. Those individuals need not contact ATP to request a copy.

Meetings: ATP is holding several public meetings (Proposers' Conferences) at several locations around the country. These meetings provide general information regarding the program, tips on preparing proposals, and the opportunity for questions and answers. Attendance at these Proposers' Conferences is not required; many successful ATP recipients have not attended a Proposers' Conference. However, those who have attended said they found the information helpful. Proprietary technical or business discussions about specific project ideas with NIST staff are not permitted at the public meetings or at any time before submitting the proposal to ATP.

Therefore, you should not expect to have proprietary issues addressed at the public meetings. NIST staff will not critique proprietary project ideas while they are being developed by a proposer. However, NIST staff will, at any time, answer questions that you may have about our project selection criteria, selection process, eligibility requirements, cost-sharing requirements, and the general characteristics of a good ATP project.

ATP Proposers' Conferences are being held on the following dates and locations:

a. March 1, 2004 in Atlanta, GA and in Dallas, TX;

b. March 3, 2004 in Boston, MA and in Seattle, WA;

c. March 5, 2004 in Chicago (Rosemont), IL and in Los Angeles, CA; and

d. March 9, 2004 in Gaithersburg, MD.

No registration fee will be charged. Detailed information on the specific locations of the Proposers' Conferences is available on the ATP Web site *http://www.atp.nist.gov*. To register for the public meeting or for further information, contact ATP at 1–800–ATP–FUND (1–800–287–3863), or register via the NIST Web site: *http://www.atp.nist.gov/atp/reg_form.htm*.

Funding Availability: Fiscal year 2004 appropriations include funds in the amount of $60.7 million for new ATP awards. ATP funds proposals on a rolling basis, therefore, some portion of this amount may be used for new awards for proposals submitted pursuant to the procedures established for the fiscal year 2002 competition and, similarly, a portion may be used for proposals submitted under this fiscal year 2004 competition. As a result, approximately $30 million of the fiscal year 2004 appropriations may be used to fund selected proposals submitted under the fiscal year 2002 competition and approximately $30 million is available for new awards under this fiscal year 2004 competition.

Statutory Authority: 15 U.S.C. 278n.

CFDA: 11.612, Advanced Technology Program (ATP).

Eligibility: U.S.-owned, single, for-profit companies and industry-led joint ventures may apply for ATP funding. In addition, companies incorporated in the United States that have parent companies incorporated in another country may apply. The term company means a for-profit organization, including sole proprietorships, partnerships, limited-liability companies (LLCs), and corporations.

The submitting organization must provide information in the Gate 2 submission related to the role of the foreign-owned company in the project to help address foreign eligibility requirements.

Cost Sharing Requirements: Small and medium sized companies applying as single-company proposers are not required to provide cost sharing of direct costs; however, they may pay a portion of the direct costs if they propose to do so, in addition to the mandatory payment of all indirect costs throughout the project. Large companies applying as single-company proposers must cost share at least 60 percent of the yearly total project costs (direct plus all of the indirect costs). Joint ventures must cost share more than 50 percent of the yearly total project costs (direct plus indirect costs).

Intergovernmental Review: ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program.

Selection Procedures: All proposals are selected based on a peer-review process, as described in 15 CFR 295.4. All proposals will be reviewed under a multiple-stage and sequential review process; therefore, prescribed information is requested at different stages called gates. There are four gates as follows:

Gate 1: Detailed information addressing the scientific and technological merit selection criterion and preliminary information addressing the potential for broad-based economic benefits selection criterion are submitted. If the information is determined to meet the scientific and technological merit selection criterion, the proposer is notified that the proposal has passed the Gate 1 stage and is asked to submit the required Gate 2 information. The proposer will have two weeks (14 calendar days) from written notification to submit the required Gate 2 information.

Gate 2: Detailed information addressing the potential for broad-based economic benefits selection criterion and the Budget Narrative are submitted. If the information submitted is determined to have high merit, the proposer is notified that the proposal has been selected as a semi-finalist and proceeds to Gate 3.

Gate 3: An invitation to the National Institute of Standards and Technology/ATP for an oral review is issued. Required forms and additional documentation are submitted, as requested by ATP. After the oral review, all semifinalist proposals are ranked, and the Selecting Official selects funding recipients based on the ranking, the availability of funds, the adherence to ATP selection criteria, and the appropriate distribution of funds among technologies and their applications. NIST reserves the right to deny awards in any case where a reasonable doubt exists regarding a proposer's ability to comply with ATP requirements or to handle Federal funds responsibly. All funding decisions are final and cannot be appealed. NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers who have been selected to receive awards. For example, NIST may require that the proposer delete from the scope of work a particular task that is deemed by NIST/ATP to be product development or otherwise inappropriate for ATP support. The proposals selected by the Selecting Official for funding proceed to Gate 4.

Gate 4: If the proposal is selected, the final award is processed and issued and funding begins.

Evaluation Criteria: The evaluation criteria used to select a proposal for funding and their respective weights are found in 15 CFR 295.6.

Selection Factors: The Source Evaluation Board (a committee made up of Federal employees) ratings shall provide a rank order to the Selecting Official for final recommendation to the NIST Grants Officer. The Selecting Official shall award in the rank order unless a proposal is justified to be selected out of rank order based upon the availability of funds, the adherence to ATP selection criteria, or the appropriate distribution of funds among technologies and their applications. NIST reserves the right to deny awards in any case where a reasonable doubt exists regarding a proposer's ability to comply with ATP requirements or to handle Federal funds responsibly.

Ineligible Projects

a. Straightforward improvements of existing products or product development.

b. Projects that are basic research.

c. Projects that are Phase II, III, or IV clinical trials.

d. Pre-commercial-scale demonstration projects where the emphasis is on demonstrating that some technology works on a large scale or is economically sound rather than on R&D that extends the state of the art.

e. Projects that ATP believes would likely be completed without ATP funds in the same time frame or nearly the

same time frame or with the same scale or scope.

f. Predominantly straightforward, routine data gathering (*e.g.*, creation of voluntary consensus standards, data gathering/handbook preparation, testing of materials, or unbounded research aimed at basic discovery science) or application of standard engineering practices.

g. Projects that are simply a follow-on or a continuation of tasks previously funded in ATP projects from essentially the same proposing team.

h. Projects in which the only risk is market oriented—that is, the risk that the end product may not be embraced by the marketplace.

Unallowable/Ineligible Costs. The following items, regardless of whether they are allowable under the federal cost principles, are unallowable under ATP:

a. Marketing, sales, or commercialization costs, unless they are included in a federally approved indirect cost rate.

b. Costs for the construction of new buildings or extensive renovations of existing laboratory buildings. However, costs for the construction of experimental research and development facilities to be located within a new or existing building are allowable provided that the equipment or facilities are essential for carrying out the proposed scientific and technical project and are approved by the NIST Grants Officer.

c. Indirect costs for single-company recipients, which must be absorbed by the company. (Note that with large businesses submitting proposals as single-company proposers, indirect costs absorbed by the large business may be used to meet the cost-sharing requirement.)

d. Bid and proposal costs, tuition costs, and costs for marketing surveys, commercialization studies, and general business planning, unless they are incorporated into a federally approved indirect cost rate. However, a university participating in an ATP project as subcontractor or as a joint venture partner may charge ATP for tuition remission or other forms of compensation in lieu of wages paid to university students working on ATP projects but only as provided in OMB Circular A–21, Section J.41. In such cases, tuition remission would be considered a cash contribution rather than an in-kind contribution.

e. For research involving human and/or animal subjects, any costs used to secure Institutional Review Board or Institutional Animal Care and Use Committee approvals before the award or during the award.

f. Relocation costs, unless they are included in a federally approved indirect cost rate.

g. Office furniture costs, unless they are included in a federally approved indirect cost rate.

h. Costs for general purpose office equipment and supplies that are not used exclusively for the research—for example, office computers, printers, copiers, paper, pens, and toner cartridges.

i. Subcontractor expenses such as those for office supplies and conferences/workshops.

j. Patent costs and legal fees, unless they are included in a federally approved indirect cost rate.

k. Profit, management fees, interest on borrowed funds, or facilities capital cost of money.

l. Subcontracts to another part of the same company or to another company with identical or nearly identical ownership. Work proposed by another part of the same company or by another company with identical or nearly identical ownership should be shown as funded through interorganizational transfers that do not contain profit. Interorganizational transfers should be broken down in the appropriate budget categories.

m. Pre-award costs.

Administrative and National Policy Requirements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this competition announcement/solicitation. These requirements are available on the Web site at *http://www.osec.doc.gov/oebam/pdf/6-PreAward.pdf.*

Intellectual Property Requirements: Title to any inventions arising from an ATP-funded project must be held by a for-profit company, or companies, incorporated or organized in the United States. A university, government laboratory, independent research organization, or other nonprofit organization cannot retain title to patents, although such organizations can receive mutually agreeable payments (either one-time or continuing) from the company or companies holding title to the patent. However, a for-profit corporation organized by a university can be considered a for-profit company for the purpose of retaining title to patents arising from an ATP award. In such a case, documentation of the for-profit status must be provided in the proposal. If an organization is not a for-profit company but plans to be involved in an ATP project, it will not be able to retain title to any patentable inventions arising from the ATP project. An organization's legal department should be made aware that ATP cannot waive this mandated provision (15 U.S.C. 278n(d)(11)(A) and 15 CFR 295.2). Title to any such invention shall not be transferred or passed, except to a company organized in the United States, until the expiration of the first patent obtained in connection with such invention.

The United States reserves a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any patentable invention arising from an ATP award. The Federal government shall not, however, in the exercise of such license, publicly disclose proprietary information related to the license. The government use license must also grant to government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all data first produced in the performance of the award to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software to distribute to the public by or on behalf of the government. The Federal government also has march-in rights in accordance with 37 CFR 401.14(j). Since its inception in 1990, ATP has not exercised either of these rights.

Projects Involving Human Subjects: Research involving human subjects must be in compliance with applicable Federal regulations and NIST policies for the protection of human subjects. Human subjects research involves interactions with live human subjects or the use of data, images, tissue, and/or cells/cell lines (including those used for control purposes) from human subjects. Research involving human subjects may include activities such as the use of image and/or audio recordings of people, taking surveys or using survey data, using databases containing personal information, and many tasks beyond those within traditional biomedical research. A Human Subjects Determination Checklist is included in the February 2004 ATP Proposal Preparation Kit as Exhibit 2 (*http://www.atp.nist.gov*) to assist you in determining whether your proposal has human subjects involvement, which would require additional documents with the Gate 1 and/or Gate 3 submission(s). Detailed information regarding the use of human subjects in research projects and required documentation is available at *http://*

www.atp.nist.gov/atp/kit-04/has_guide/contents.htm, or by calling 1–800–287–3863.

Projects Involving Animal Subjects: Research involving animal subjects must be in compliance with applicable federal regulations and NIST policies for the protection of animal subjects. Vertebrate animal research involves live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals or for teaching or testing. The regulations do not apply to animal tissues purchased from commercial processors or tissue banks or to uses of preexisting images of animals (*e.g.*, a wildlife documentary or pictures of animals in newscasts). Detailed information regarding the use of animal subjects in research projects and required documentation can be obtained at *http://www.atp.nist.gov/atp/kit-04/has_guide/contents.htm*, or by calling 1–800–287–3863.

Paperwork Reduction Act: This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA). The use of Forms NIST–1262 and NIST–1263, SF–424B, SF–LLL, CD–346, and Budget Narrative form has been approved by OMB under the respective control numbers 0693–0009, 0348–0040, 0348–0046, 0605–0001, and 0693–0009. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: February 11, 2004.

Arden L. Bement, Jr.,

Director, NIST.

[FR Doc. 04–3435 Filed 2–17–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of a Public Meeting Regarding a Permit Application To Construct an Artificial Reef Within the Florida Keys National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; request for public comments.

SUMMARY: NOAA announces a public meeting and a request for public comments about its receipt of a permit application to construct an artificial reef within the Florida Keys National Marine Sanctuary (FKNMS) and of its intent to prepare an environmental analysis of the project pursuant to the National Environmental Policy Act (NEPA). The City of Key West has requested permission to sink the vessel *USS Hoyt Vandenberg* within the boundaries of the FKNMS for purposes of establishing an artificial reef. The NMSP is soliciting comments from the public regarding this proposal and to identify any associated issues.

DATES: A public meeting will be held at the Nancy Foster Center, Truman Annex, Key West, Florida from 6:30 p.m. to 8 p.m. on Thursday, March 4, 2004.

Written comments must be received on or before March 19, 2004.

ADDRESSES: Submit comments to Billy Causey, FKNMS Superintendent (Vandenberg Project Review), P.O. Box 500368, Marathon, Florida 33050.

Copies of the application materials may be obtained by writing to the above address, or by contacting the individual listed in **FOR FURTHER INFORMATION CONTACT**. Relevant information may also be downloaded from the NMSP Web site. at *http://www.sanctuaries.nos.noaa.gov/library/library.html*.

For directions to the public meeting contact the individual listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Billy Causey, FKNMS Superintendent at (305) 743–2437 x26 or by e-mail at *Billy.Causey@noaa.gov.*

SUPPLEMENTARY INFORMATION: The FKNMS Superintendent has received a proposal and permit application from the City of Key West, submitted by their agents Resource Control Corporation and Artificial Reefs of the Keys Inc., to place the *USS Hoyt Vandenberg* on the seafloor of the FKNMS for the purpose of establishing an artificial reef. The City of Key West and its agents are hereafter referred to as ''the applicant.''

Project Description

The applicant proposes to place the *USS Hoyt Vandenberg* on a portion of the seafloor characterized by sand and rubble in approximately 140-feet of water south of Key West, Florida. The following coordinates denote the corners of the area within which the applicant proposes to establish the artificial reef:

(NE) Lat.—24 deg. 27.70′ N; Lon.—81 deg. 44.15′ W
(SE) Lat.—24 deg. 27.50′ N; Lon.—81 deg. 44.15′ W
(SW) Lat.—24 deg. 27.50′ N; Lon.—81 deg. 44.35′ W
(NW) Lat.—24 deg. 27.70′ N; Lon.—81 deg. 44.35′ W

The *USS Hoyt Vandenberg*, a former troop transport, is approximately 520-feet in length, with a 71-foot beam, and with a final vertical height of 100 feet. A stability analysis conducted for the applicant suggests the vessel will be stable in any orientation at the proposed depth during a 100-year storm event that would produce a wave height of 33-feet.

The United States Army Corps of Engineers and Florida Department of Environmental Protection issued permits for the proposed project in April 2001 and August 2000, respectively. The vessel would be released from the James River Reserve Fleet, Eustis, Virginia, to the State of Florida before being turned over to the City of Key West.

National Environmental Policy Act Analyses

The NMSP has made an initial determination that the issuance of a permit for this activity would not be categorically excluded from the requirement to prepare an environmental assessment (EA) pursuant to NEPA. Therefore, the NMSP will prepare an EA pursuant to NEPA, the CEQ implementing regulations (40 CFR parts 1500 through 1508), and NOAA's implementing guidelines on NEPA codified in NOAA Administration Order 216–6. However, if the EA process does not result in NMSP making a ''finding of no significant impact,'' NMSP will

subsequently prepare an environmental impact statement.

Comments

NMSP would like public comments on the following:

1. Comments about the scope of issues that should be evaluated in a NEPA document concerning this proposal;

2. Comments regarding the expected impacts of this artificial reef project on the marine environment of the FKNMS and the overall significance of those impact;

3. Recommendations on mitigation measures and permit conditions that would eliminate or minimize any impacts of this project on the FKNMS or the environment generally should the permit be issued; and

4. Recommendations for specific monitoring programs or plans that would allow the NMSP to know the benefits (or lack thereof) of the project to FKNMS management, the impacts of the project on FKNMS resources, and the stability of the vessel.

Dated: February 12, 2004.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–3575 Filed 2–17–04; 8:45 am]

BILLING CODE 3510–NK–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan; Correction

February 12, 2004.

In the Notice and the Letter to the Commissioner, Bureau of Customs and Border Protection published in the **Federal Register** on October 20, 2003 (68 FR 59927), on Page 59929, Line 35, Category 659-H was inadvertently left out of Footnote number 13 (Category 659pt.). The footnote should read as follows: ''Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.''

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–3462 Filed 2–17–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Ecolab, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Ecolab, Inc., a revocable, nonassignable, exclusive license to practice in the U.S. and certain foreign countries, the Government-owned inventions described in Navy Case No. 83,326 filed September 9, 2002, entitled ''Ion Selective Electrodes for Direct Organic Drug Analysis in Saliva, Sweat, and Surface Wipes'', and Navy Case No. 84,717 filed December 3, 2003, entitled ''Multiparameter System for Environmental Monitoring'', in the field of testing and monitoring of water, wastewater and cleaning and sanitizing solutions in industrial and institutional facilities and all industrial and institutional markets worldwide, which includes, but is not limited to, restaurants, quick service restaurants, hotels, motels, cruise ships, schools, caterers, in-plant feeding facilities, governmental and military facilities, groceries, convenience stores, delicatessens, veterinary facilities, nursing homes, mortuaries, commercial real estate, hospitals, and other healthcare facilities, vehicle wash facilities, laundries, food and beverage processing plants, rendering plants, pharmaceutical plants, farms, breweries and manufacturing or assembly facilities, mass merchandisers, and warehouse stores.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 4, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: February 10, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–3423 Filed 2–17–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Reestablishment of the Electricity Advisory Board

Pursuant to section 14 (a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Electricity Advisory Board (the Board) has been reestablished for a two-year period, beginning in February 2004.

The Board will continue to provide balanced and authoritative advice to the Secretary of Energy on matters concerning electricity policy issues of concern to the Department; Department electricity programs and initiatives; current and future capacity of the electricity system (generation, transmission, and distribution), regionally and nationally; identification of issues related to capacity, production, delivery, reliability, and utility deregulation/restructuring and recommendations on policy and Department initiatives to deal with issues identified; coordination between the Department and state and regional officials and the private sector on matters affecting electricity supply and reliability; as well as coordination between Federal, State, and utility industry authorities in the event of supply disruption or other emergencies related to electricity generation and distribution.

The Board members are selected to assure well-balanced representation in areas relating to energy policy, renewable energy, environmental science, economics, business expertise and broad public policy interests. Membership of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act (Pub. L. 92–463) and implementing regulations.

The renewal of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel, U.S. Department of Energy, ME–75, FORS, Washington, DC 20585, telephone: (202) 586–3279.

Issued in Washington, DC, on February 10, 2004.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 04–3431 Filed 2–17–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Funding Opportunity Announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42066 entitled ''Epidemiology and Toxicology of Primary and Secondary Particulate Matter Emissions from Coal-Fired Power Plants.'' The DOE/NETL is seeking applications to conduct research that will provide greater insight into the human health effects that may result from inhaling primary or secondary fine particulate matter (PM2.5) from coal-fired electric power generating facilities.

DATES: The funding opportunity announcement will be available on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about February 13, 2004. Applicants can obtain access to the funding opportunity announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the ''Submit Question'' feature of IIPS at *http://e-center.doe.gov*. Locate the announcement on IIPS and then click on the ''Submit Question'' button. You will receive an electronic notification that your question has been answered. Responses to questions may be viewed through the ''View Questions'' feature. If no questions have been answered, a statement to that effect will appear. You should periodically check ''View Questions'' for new questions and answers.

FOR FURTHER INFORMATION CONTACT: Larry D. Gillham, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, E-mail Address: *Gillham@NETL.DOE.GOV*, Telephone Number: 412–386–5817.

SUPPLEMENTARY INFORMATION: Through this solicitation, NETL seeks applications in the following two (2) separate (*i.e.*, stand alone) Areas of Interest:

(1) Design and Feasibility Assessment of a Retrospective Epidemiology Study of Fine Particulate Matter (PM2.5) and its Components in Metropolitan Pittsburgh, PA.

(2) Toxicological Assessment of Coal Plant PM Emissions Under Realistic Exposure Scenarios.

Applicants must select and target only one (1) Area of Interest per application. DOE anticipates the award of one cost-sharing cooperative agreement for Area of Interest 1 and approximately 2 to 5 cost-sharing cooperative agreements under Area of Interest. 2. Approximately $4.8 to $7.5 million of DOE funding is expected to be available for new awards under this announcement. A minimum of 20% cost share will be required for each award made under this announcement. Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the funding opportunity announcement will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement. The actual funding opportunity announcement document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on February 4, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–3430 Filed 2–17–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–577–001, FERC–577]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

February 11, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 6, 2003 (68 FR 57682–83), and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by March 17, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–7856.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–577–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''*e*Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. Collection of Information: FERC–577 ''Gas Pipeline Certificates: Environmental Impact Statement''.

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: 1902–0128.

The Commission is now requesting that OMB approve and reinstate a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. Necessity of the Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190). NEPA requires that all Federal agencies must include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of human environment, a detailed statement on: The environmental impact on the proposed actions; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The Commission uses the pipeline's data to evaluate the environmental aspects of construction proposals and may be used in the Commission staff's independent preparation of Environmental Assessments or Environmental Impact Statements. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 2; 157; 284; 375; and 380.

5. Respondent Description: The respondent universe currently comprises 76 companies (on average per year) subject to the Commission's jurisdiction.

6. Estimated Burden: 233,226 total hours, 76 respondents (average per year), 16.57 responses per respondent, and 185.2 hours per response (average).

7. Estimated Cost Burden to Respondents: 233, 226 hours/2080 hours per year × $107,185 per year = $13,123,560. The cost per respondent is equal to $172,678.

Statutory Authority: Section 102 (2) (C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–306 Filed 2–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Committee

[Docket No.IC04–547–000 FERC–547]

Commission Collection Activities, Proposed Collection; Comment Request; Extension & Reinstatement

February 11, 2004.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c) (2) (a) of the Paperwork Reduction Act of 1995 (Pub. L. No.104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by April 16, 2004.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 and should refer to Docket No. IC 04–547–000.

Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by E-mail to *efiling@ferc.gov*. Comments should not be submitted to this E-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at

(202)273–0873 and by E-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–547, ''Gas Pipeline Rates: Refund Report Requirements'' (OMB No. 1902–0084) is used by the Commission to implement the statutory refund provisions governed by sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Sections 4 and 5 authorize the Commission to order a refund, with interest, on any portion of a natural gas company's increased rate or charge found to be not just or reasonable. Refunds may also be instituted by a natural gas company as stipulation to a Commission-approved settlement agreement or provision under the company's tariff. Section 16 authorizes the Commission to prescribe the rules and regulations necessary to administer its refund mandates. The Commission's refund and reporting requirements are set forth at Sections 154.501 and 154.502 of the Commission's regulations (18 CFR 154.501 and 154.502). The data collected thereunder allows the Commission to monitor the refunds owed by the Natural gas companies and to ensure the flow through of the refunds, with applicable interest, to the appropriate customers and ultimately to the residential customers and end users.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this information collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden (number of hours per response)	Total annual burden (total number of hours)
(1)	(2)	(3)	(1)x(2)x(3)
75	1	75	5,625

Estimated cost to respondents: 5,625 hours (2,080 per year × $107,185 = $289,863. The cost per respondent = $3,865 (rounded off). The reporting burden includes the total time, effort, or financial resources to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–307 Filed 2–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–537–001, FERC–537]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted For OMB Review

February 11, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 6, 2003 (68 FR 57679–80), and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by March 17, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–537–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the

Commission's Web site at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. Collection of Information: FERC–537 ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment.''

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: 1902–0060.

The Commission is now requesting that OMB approve and reinstate with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. Necessity of the Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Natural Gas Policy Act of 1978 (NGPA), and the Natural Gas Act (NGA). Under the NGA, natural gas pipeline companies must obtain Commission authorization to undertake the construction or extension of any facilities, or to acquire or operate any such facilities, or to acquire or operate any such facilities or extensions in accordance with section 7(c) of the NGA. A natural gas company must also obtain Commission approval under section 7(b) of the NGA prior to abandoning any jurisdictional facility or service. Under the NGPA interstate and intrastate pipelines must obtain authorization for certain transportation arrangements.

The information collected is necessary to certificate interstate pipelines engage the transportation and sale of natural gas, and the construction, acquisition, and operation of facilities to be used in those activities, to authorize the abandonment of facilities and services and to authorize certain NGPA transactions. If a certificate is granted, the natural gas company can construct, acquire, or operate facilities plus engage in transportation or sale of natural gas. Conversely, approval of an abandonment application permits the pipeline to cease service and/or discontinue the operation of such facilities. Authorization under NGPA section 311(a) allows the interstate or intrastate pipeline applicants to render certain transportation services. The Commission implements the filing requirements in the Code of Regulations (CFR) under 18 CFR parts 157.5–.11; 157.13–.20; 157.22; 157.53; 157.201–.209; 157.211; 157.214–.218; 284.8; 284.11; 284.126; 284.221; 284.223–.224; 284.227.

5. Respondent Description: The respondent universe currently comprises 76 companies (on average per year) subject to the Commission's jurisdiction.

6. Estimated Burden: 210,234 total hours, 76 respondents (average per year), 10.2 responses per respondent, and 271.2 hours per response (average).

7. Estimated Cost Burden to respondents: 210,234 hours / 2080 hours per years × $107,185 per year = $11,829,807. The cost per respondent is equal to $155.655.

Statutory Authority: Section 311 Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 33301–3432, and the Natural Gas Act (NGA) 15 U.S.C. 717–717w.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–309 Filed 2–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Reclassify Project Shoreline and for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

February 11, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Reclassification of project shoreline and non-project use of project lands and waters.

b. *Project No.:* 2232–459.

c. *Date Filed:* January 13, 2004.

d. *Applicant:* Duke Power, a Division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell and Mecklenburg Counties, North Carolina and Chester, Fairfield, Kershaw, Lancaster, and York Counties, South Carolina. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Corporation, PO Box 1006, Charlotte, North Carolina, 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Brittany Schoenen at (202) 502–6097, or e-mail address: *bschoenen@ferc.gov*.

j. *Deadline for filing comments and or motions:* March 12, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2197–068) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power (Duke) is seeking Commission approval to reclassify 560' of project shoreline from ''Public Infrastructure'' to ''Business Industrial''. Upon approval Duke seeks to issue a permit to Lake Norman Dredging & Marina Construction for the construction and operation of a commercial pier with one boat ramp and two boat slips.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–305 Filed 2–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

February 11, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major unconstructed project.

b. *Project No.:* 11858–02.

c. *Date Filed:* February 2, 2004.

d. *Applicant:* Elsinore Municipal Water District and the Nevada Hydro Company, Inc.

e. *Name of Project:* Lake Elsinore Advanced Pumped Storage Project.

f. *Location:* On Lake Elsinore and San Juan Creek, in the Town of Lake Elsinore, Riverside County, California. The project would occupy federal lands, including lands managed by the Forest Service (Cleveland National Forest), Bureau of Land Management, and the Department of Defense (Camp Pendleton).

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Rexford Wait, The Nevada Hydro Company, 2416 Cades Way, Vista, California 92083, (760) 599–0086.

i. *FERC Contact:* Jim Fargo, 202–502–6095, *james.fargo@ferc.gov*.

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 2, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would consist of: (1) A new upper reservoir (Morrell Canyon) having a 180-foot-high main dam and a gross storage volume of 5,760 feet, at a normal reservoir surface elevation of 2,760 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 30 miles of 500 kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by § (106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—May 2004

Request Additional Information—May 2004

Issue Acceptance letter—September 2004

Issue Scoping Document 1 for comments—October 2004

Hold Scoping Meeting—November 2004

Request Additional Information (if needed)—January 2005
Issue Scoping Document 2—January 2005
Notice of application is ready for environmental analysis—January 2005
Notice of the availability of the draft NEPA document—July 2005
Start 10(j) process—September 2005
Notice of the availability of the final NEPA document—January 2006
Ready for Commission's decision on the application—April 2006

Final amendments to the application must be filed with the commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–308 Filed 2–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) firm power base charge and rates. The current base charge and rates expire September 30, 2004. The current base charge is not sufficient to pay all annual costs including operation, maintenance, replacement, and interest expenses, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to pay all annual costs, including operation, maintenance, replacement, and interest expenses, and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2004. The proposed base charge and rates are scheduled to become effective on October 1, 2004, the beginning of Federal fiscal year (FY) 2005, and will remain in effect through September 30, 2005. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 18, 2004. Western representatives will explain the proposed base charge and rates at a public information forum on March 25, 2004, beginning at 10:30 a.m. m.s.t., in Phoenix, Arizona (AZ). Interested parties can provide oral and written comments at a public comment forum on April 15, 2004, beginning at 10:30 a.m. m.s.t., at the same location.

ADDRESSES: The meetings will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ. Please send comments to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov.* Western must receive comments by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Base Charge and Rates for BCP Firm Power

The proposed base charge and rates for BCP firm power service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating payments. These annual costs are reduced by the projected revenue from water sales, visitor services, water pump energy sales, facility use charges, regulation and spinning reserve services, miscellaneous leases, and late fees. The projected annual revenue requirement is the base charge for firm power service and is divided equally between capacity dollars and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of the Department of Energy (DOE) approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F6 for BCP firm power service on September 18, 2000 (Rate Order No. WAPA–94, October 13, 2000). The Federal Energy Regulatory Commission confirmed and approved the rate formula on a final basis in Docket No. EF00–5092–000 issued July 31, 2001. Rate Schedule BCP–F6 became effective on October 1, 2000, for the period ending September 30, 2005. Under Rate Schedule BCP–F6, for FY 2004, the base charge is $51,719,075, the forecasted energy rate is 6.46 mills per kilowatt-hour (mills/kWh) and the forecasted capacity rate is $1.17 per kilowatt month (kWmonth). The composite rate is 12.91 mills/kWh.

The FY 2005 proposed base charge is $59,460,550, the forecasted energy rate is 6.95 mills/kWh, and the forecasted capacity rate is $1.27/kWmonth. The proposed composite rate is 13.90 mills/kWh. This is approximately an 8-percent increase from the current composite rate. The proposed base charge and rates are based on the FY 2004 operating plan for Western and the Bureau of Reclamation, and also account for the lower revenue level due to restriction of public tours at Hoover Dam following the September 11, 2001, terrorist attack in the United States. The following table compares the current and proposed base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current Oct. 1, 2003 through Sept. 30, 2004	Proposed Oct. 1, 2004 through Sept. 30, 2005	Percent change increase
Total Composite (mills/kWh)	12.91	13.90	8
Base Charge ($)	51,719,075	59,460,550	15
Energy Rate (mills/kWh)	6.46	6.95	8
Capacity Rate ($/kWmonth)	1.17	1.27	8

The increase in the base charge and rates results from higher annual costs in operation and maintenance, replacements, visitor's center costs and lower revenue projections for the visitor center.

Procedural Requirements

Western will hold both a public information forum and a public comment forum. After considering comments, Western will recommend the proposed base charge and rates for final approval by the DOE Deputy Secretary.

The proposed firm power service base charge and rates for BCP are being set under the DOE Organization Act, 42 U.S.C. 7152; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts that specifically apply to the project involved.

Availability of Information

Interested parties may review and copy all brochures, studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed base charge and rates. These documents are at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities, and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking specifically involving rates or services.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; therefore, this notice requires no clearance by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking specifically relating to rates or services and involves matters of procedure.

Dated: February 2, 2004.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 04–3432 Filed 2–17–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7624–3]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses To Agency Clearance Requests

OMB Approvals

EPA ICR No. 2083.01; Estimating the Value of Improvements to Coastal Waters—A Pilot Study of a Coastal Valuation Survey; was approved 01/22/2004; OMB Number 2090–0024; expires 01/31/2005.

EPA ICR No. 1704.07; Toxic Chemical Release Reporting, Alternate Threshold for Low Annual Reportable Amounts, Recordkeeping, Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA); in 40 CFR part 372; was approved 01/09/2004; OMB Number 2070–0143; expires 01/31/2006.

EPA ICR No. 0234.08; Performance Evaluation Studies of Water and Waste Water Laboratories; was approved 01/09/2004; OMB Number 2080–0021; expires 01/31/2007.

EPA ICR No. 1363.13; Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA); in 40 CFR part 372; was approved 01/09/2004; OMB Number 2070–0093; expires 01/31/2006.

Short Term Extensions

EPA ICR No. 1953.02; Information Collection Request for Best Management Practices Alternative, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category; OMB Number 2040–0230; on 01/12/2004 OMB extended the expiration date to 04/30/2004.

EPA ICR No. 0616.07; Compliance Requirements for Child Resistant Packaging; Number 2070–0052; on 01/30/2004 OMB extended the expiration date to 04/30/2004.

Dated: February 9, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–3452 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7624–2]

Notice of Availability for FY 04 Enforcement and Compliance Assurance Multi-Media Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), is soliciting proposals for states and tribes to support their on-going efforts in state/tribal data system modernization. In particular, the grants will fund technical assistance and technical expertise for states/tribes to ensure that they will be able to accurately transmit water enforcement and compliance data to EPA. Grants will be in the range of $50,000—$200,000. The total number and amount of the awards will depend on the amount of funds available.

DATES: Electronic or hard copy proposals must be received by April 12,

2004. Funding decisions will be made by late May based on the proposals. Applicants selected to receive funds will be required to submit final grant materials (*e.g.*, grant application, certifications, assurances) to the appropriate EPA Region by August 29, 2004.

ADDRESSES: Copies of proposals should be sent to David Piantanida (2222A), U.S. EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, email: *piantanida.david@epa.gov*, Tel: (202) 564–8318, Fax: (202) 564–0034; and simultaneously to the appropriate Regional Enforcement Coordinator. This Notice will be posted on the EPA's Office of Enforcement and Compliance Assurance Web site at *http://www.epa.gov/compliance/planning/state/grants/stag/index.html*

FOR FURTHER INFORMATION CONTACT: David Piantanida at (202) 564–8318.

SUPPLEMENTARY INFORMATION:

I. Eligibility and Authority

Eligible applicants include States, Tribes, Inter-Tribal Consortia, Territories, Local governments, and multi-jurisdictional state organizations. Where a lead state environmental agency exists, applicants should work with and coordinate through, the lead state environmental agency.

EPA expects to award these grants under the Clean Water Act, Section 104. The applicable grant regulations for this grant program are in 40 CFR part 31 for state and local governments and Indian tribes.

Authority to enter into assistance agreements for the purposes described in this Notice are delegated to OECA in EPA Delegation 1–47, Assistance Agreements for Economic, Social Science, Statistical, and Other Research, Development, Studies, Surveys, Demonstrations, Investigations, Public Education Programs, Training, and Fellowships.

Funding priorities must be allowable under 66.709 (Capacity Building Grants and Cooperative Agreements for States and Tribes) of the *Catalog of Federal Domestic Assistance* (CFDA).

II. Funding

The funds available are from OECA's Multi-Media State and Tribal Assistance Grants (STAG) appropriation. The grants/cooperative agreements should be in the range of $50,000 to $200,000, although proposals below or above that range will be considered. The total number and amount of the awards will depend on the amount of funds available. The U.S. EPA reserves the right to make no awards under this solicitation.

State and tribal matching funds are not required. However, preference will be given to proposals which also make a commitment of state or tribal resources towards the total project cost. This can be state or tribal personnel salary dedicated to the project, cash contribution to the project budget, or other ''in kind'' contributions. The value of donated or ''in-kind'' services in the performance of a project should be considered in accordance with OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.'' Lastly, federal funds cannot generally be used to provide a match or cost-share for other federal projects.

EPA can not predict that additional funds for these focus areas will be available in future years. Therefore, states and tribes should assume that these funds will be available on a one-time only basis and should not propose projects requiring annual funding.

III. Desired Projects

OECA will only consider funding projects for the focus area described below and for projects which can be completed in three years or less. Projects will be evaluated for potential funding based on the extent to which they address the focus area below.

A. Focus Area—Permit Compliance System Modernization (PCS)

In FY2004, OECA will continue its effort in the phased implementation of the Integrated Compliance Information System (ICIS). ICIS will be a consolidated enforcement, compliance and National Pollutant Discharge Elimination System (NPDES) permitting information management system that will provide a single source of information for the national enforcement, compliance and NPDES permitting programs. This new system will reduce burden and duplication by providing a single source of data entry, will improve public access to data, support the development of risk reduction strategies, and will provide states and Regions with a modernized system to meet their program management needs.

The second phase of ICIS is centered around the modernization of PCS which supports the implementation of the Clean Water Act (CWA) NPDES program. PCS has little or no data for major new NPDES requirements, such as Concentrated Animal Feeding Operations (CAFOs) Storm Water, and Sanitory Sewer Overflow (SSO). PCS is being modernized to address these serious data gaps, as well as provide for easy use of and access to the system, use of current information technology, support the Agency's initiative for data integration, and to promote the exchange and sharing of data via the Network and the Agency Central Data Exchange (CDX) with our state partners. The availability of more comprehensive data in a modernized PCS will enhance the Agency's and the states' ability to more effectively manage the CWA NPDES program.

Grant funding will support state/tribal efforts to procure technical assistance and technical expertise to ensure the continued flow of data from states and tribes to OECA modernized systems. Examples of state/tribal technical assistance/expertise activities to be covered include:

- Migration of state/tribal data from the legacy Permit Compliance System (PCS) to the new modernized Integrated Compliance Information System-National Pollutant Discharge Elimination System, (ICIS–NPDES) (*e.g.*, conversion of General Permit data currently in legacy PCS to correspond with the General Permit data requirements of the modernized system);
- Data clean-up to support the state/tribal data conversion from the legacy PCS system to the new ICIS–NPDES; and,
- Activities to support the states/tribes in their move to the full use of ICIS–NPDES (*e.g.*, feasibility study/requirement analysis).

B. Proposal Criteria

All proposals will be evaluated and ranked based on the criteria outlined below. The following three criteria and associated points will be used by EPA to evaluate the proposals:

(a) [20 points] The proposal must describe the existing and/or proposed state/tribal use of the PCS system (*e.g.*, support management of the NPDES program);

(b) [20 points] The proposal must describe how data is currently being entered into PCS;

(c) [60 points] Proposals must clearly identify the states/tribes activities to be performed that will ensure data entry and/or data flow of NPDES information to the new ICIS–NPDES and to meet EPA's modernized system, and/or new, data requirements. Examples of modernization activities include data migration, data conversion, and analyses or studies to support the state's full use of the modernized system.

C. Past Performance

In addition to the above criteria, EPA will also consider past performance of a grantee under this grant program (*e.g.*, timely and complete quarterly/semi-annual reports, results/outcomes are apparent during the project, final reports are timely and complete). Where there are two proposals that have been ranked equally, the applicant with better past performance will win. If a grantee should have no record under this program, they will not be unfairly penalized.

D. Other EPA Funding Opportunity—Office of Environmental Information—The Exchange Network

Applicants may also be interested in related efforts by EPA and its State/Tribe/Territory partners to develop the Environmental Information Exchange Network. The Exchange Network is an Internet- and standards-based, secure information systems network which will support the electronic storage and collection of high-quality data, provide real-time access to environmental data, and help users integrate data from many different sources. The Exchange Network Grant Program provides funding to States, Tribes, and Territories to support the development of Exchange Network nodes and data flows. The deadline for submitting pre-proposals for the FY 2004 Exchange Network Grant Program was February 3, 2004, but EPA expects to continue the program in FY 2005, provided appropriations for the program become available. In FY 2005, EPA plans to highlight ICIS–NPDES as one of the key Exchange Network data flows. For more information about the types of ICIS–NPDES activities that may be supported in the future, please refer to the FY 2004 Exchange Network Grant Program Guidance (*http://www.epa.gov/Networkg, click on Guidance Document, and go to Section VIII: Systems Information*). For further information about the Exchange Network Grant Program, please contact Rebecca Moser at (202) 566–1679.

IV. Process and Schedule

Electronic proposals must be received by EPA by April 12, 2004 and should follow the format below. Proposals should be submitted simultaneously to the appropriate Regional Enforcement Coordinator, and to David Piantanida, OECA, (See contact information below). Funding decisions will be made by late May, 2004 based on the proposals. Applicants selected to receive funds will be required to submit a final grant package electronically by August 29, 2004. Regions will provide final application materials to selected applicants.

FOIA, CBI, and Enforcement Screening: Applicants should be aware that proposals submitted under this or any other EPA grant program are subject to the Freedom of Information Act (FOIA). This means that anyone can request and receive copies of all the information submitted in your grant proposal. If your application contains any Confidential Business Information (CBI), be sure to highlight it so the confidentiality can be protected in the event of a FOIA request.

Proposed Milestones for 2004 OECA Multi Media Assistance Agreements

April 12 Electronic Proposals due simultaneously to the appropriate EPA Regional Enforcement Coordinator, and David Piantanida, (OECA) (See contact information below).

Late May EPA notifies all applicants (selected and non-selected) via e-mail of funding decisions.

Mid June Selected recipients receive final application materials from EPA Regional office. Regional Project Officer and Regional Grants Contact are identified.

August 29 Final Proposals and Grant Applications are due to Regional Project Officer, Regional Grant Contact, and David Piantanida, (OECA).

Late September Grants are awarded

V. Format for Proposals

Proposals should not exceed 12 pages and follow the format below: (12 point font, on 8½ by 11 inch paper)

A. Project Information:
State/Tribe and Department:
Title of Project:
Focus Area: (from Notice of Availability).
Total Funds Requested from EPA:
Total Project Cost (including state/tribe cash and in-kind contributions):
Contact Person: (name, title, address, phone, fax, & email).
Preferred Assistance Agreement: (Grant or cooperative agreement).

B. Summary:
- Summary of the problem being addressed;
- Summary of project goal(s);
- Summary of project components;
- Summary of how the project components will address the problem & attain the goals.

C. Summary Work Plan:
- Proposed activities—list and describe activities and how they relate to the proposal criteria;
- Measures—how will the success of the project be measured? Include both output and environmental outcome measures;
- Sharing results—how will the results of the project be shared across states/tribes?

D. Project Milestones:
- List project milestones with estimated dates, including estimated duration of project.

E. Project Costs:
- Include a detailed itemized budget for all project costs—distinguish the funds requested from any state/tribe contributions (in kind or other).

VI. Reports

Awarded recipients will be required to submit semi-annual and final progress reports to their project officer and to David Piantanida at the address below. A template reporting form will be e-mailed to all recipients. Recipients will also be required to complete annual financial status reports. All reports must be prepared in either Word or Wordperfect formats and delivered electronically to the appropriate project officer and to David Piantanida.

VII. Contact Information

For more information regarding this process, please contact David Piantanida at the address below: David Piantanida (2222A), US EPA—Ariel Rios South Rm 6149D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *piantanida.david@epa.gov.*
Tel: (202) 564–8318.
Fax: (202) 564–0034.

EPA Regional Contacts

EPA Region I
(Act) Enforcement Coordinator: Joel Blumstein—*blumstein.joel@epa.gov*
Enforcement Division Director: Stephen Perkins—*perkins.stephen@epa.gov*

EPA Region II
Enforcement Coordinator: Barbara McGarry—*mcgarry.barbara@epa.gov*
Enforcement Division Director: Dore LaPosta—*laposta.Dore@epa.gov*

EPA Region III
Enforcement Coordinator: Samantha Fairchild—*fairchild.samantha@epa.gov*

EPA Region IV
Enforcement Coordinator: Bruce Miller—*miller.bruce@epa.gov*
Enforcement Division Director: Mary Kay Lynch—*lynch.mary-kay@epa.gov*

EPA Region V
Compliance Assistance Coordinator: Linda Mangrum—*mangrum.linda@epa.gov*

EPA Region VI

Enforcement Coordinator: Connie Overbay—*overbay.connie@epa.gov*

Enforcement Division Director: Gerald Fontenot—*fontenot.gerald@epa.gov*

EPA Region VII

Enforcement Coordinator: Althea Moses—*moses.althea@epa.gov*

EPA Region VIII

Enforcement Coordinator: Eddie Sierra—*sierra.eddie@epa.gov*

Enforcement Division Director: Carol Rushin—*rushin.carol@epa.gov*

EPA Region IX

Enforcement Coordinator: Jim Grove—*grove.jim@epa.gov*

EPA Region X

Enforcement Coordinator: Deborah Flood—*flood.deborah@epa.gov*

(Act) Enforcement Division Director: Mike Bussell—*bussell.Mike@epa.gov*

Dated: February 9, 2004.

Lisa Lund,

Acting Director, Office of Compliance.

[FR Doc. 04–3451 Filed 2–17–04; 8: 45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7624–5]

Gulf of Mexico Program Policy Review Board Meeting and Management Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a joint meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB) and Management Committee (MC).

DATES: The meeting will be held on Thursday, March 18, 2004, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Homewood Suites, 901 Poydras Street, New Orleans, LA 70130 (504–581–5599).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: February 9, 2004.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program—Joint Policy Review Board/Management Committee Meeting

Homewood Suites, 901 Poydras Street, New Orleans, LA.

Agenda

Thursday, March 18, 2004

8:30 Welcome and Introductions, Jimmy Palmer, EPA Regional Administrator, Region 4, Atlanta

8:40 Overview of Meeting Agenda & Objectives Status Review of Follow-up Action Items, Bryon Griffith, Gulf of Mexico Program Office

9 FY 2003 Program Accomplishments, Bryon Griffith, Gulf of Mexico Program Office

Purpose: Informational

9:30 Executive Order Status/Update, Bryon Griffith, Gulf of Mexico Program Office

Purpose: Informational

10 Break

10:45 Briefings on Emerging Initiatives

Purpose: To receive briefings and updates on issues and initiatives pertinent to the Gulf of Mexico.

PEW Commission Report—White House Views, Kameran Onley, Associate Director—CEQ

U.S. Ocean Commission Report (Governance Briefing), Dr. Frank Muller-Karger, Commissioner

12 Lunch

1 U.S. Mexico Gulf Programs Integration—Gulf of Mexico States Accord, Gary L. Springer, Executive Director—GOMSA

1:30 White Water to Blue Water Initiative, Patrick Cotter, EPA/Office of International Activities

2 Gulf Hypoxia—Implementation Plan Status Report, Larinda Tervelt, Gulf of Mexico Program Office

Industry-Led Solutions Workshop, Dr. Larry Beran, Texas Institute of Applied Environmental Research (TIAER)

2:30 FY 2004 Program Workplan Overview/PRB Endorsement and Proposed Addition of Choctawhatchee Basin as Priority Area, Bryon Griffith, Gulf of Mexico Program Office

2:45 Roundtable Discussion/Wrap-up and Next Steps

3 Adjourn

[FR Doc. 04–3453 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7624–4]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Wednesday, March 17, 2004, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Homewood Suites, 901 Poydras Street, New Orleans, LA 70130 (504–581–5599).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: February 9, 2004.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program—Citizens Advisory Committee Meeting Agenda

Homewood Suites, 901 Poydras Street, New Orleans, LA 70130, (504) 581–5599.

Wednesday, March 17, 2004

8:30–8:45 Opening Remarks/Introductions, Brian Grantham, Chair

8:45–10:45 EPA Water Quality 101 Workshop, Marjan Peltier, EPA Region 4

10:45–11 Break

10–12:30 EPA Water Quality 101 Workshop Continued

12:30–1:45 Lunch

1:45–2:30 Bacterial Source Tracking Presentation, Dr. R.D. Ellender, University of Southern Mississippi

2:30–3:15 Louisiana Wetlands Resolution Update, Jean Westbrook, CAC, Women for a Better Louisiana

3:15–3:30 Break

3:30–4 Wrap-Up and Discussion

[FR Doc. 04–3454 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0213; FRL–7343–2]

Spirodiclofen; Notice of Filing a Pesticide Petition to Establish a Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0213, must be received on or before March 19, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address:*kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0213. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0213. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0213. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0213.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0213. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 27, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Bayer CropScience and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 2F6469

EPA has received a pesticide petition (PP 2F6469) from Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of Spirodiclofen; 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro [4,5]dec-3-en-4-yl ester 2,2-dimethyl-butanoic acid, in or on the raw agricultural commodities citrus fruit group at 0.3 parts per million (ppm), citrus pulp, dried, at 0.4 ppm, citrus oil at 20 ppm, pome fruit group at 0.8 ppm,

pome fruit pomace, wet, at 6.0 ppm, stone fruit group at 1.0 ppm, tree nut group at 0.05 ppm, almond hulls at 20 ppm, pistachios at 0.05 ppm, grape at 2.0 ppm and grape, raisin at 4.0 ppm. Spirodiclofen, 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4,5]dec-3-en-4-yl ester 2,2-dimethyl-butanoic acid, and/or its enol metabolite, 3-(2,4-dichlorophenyl)-4-hydroxy-1-oxaspiro [4,5]dec-3-en-2-one, in or on the raw agricultural commodities cattle, fat, at 0.01 ppm and cattle, meat by-products, at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of spirodiclofen in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled spirodiclofen in various crops, all showing similar results. The residue of concern is spirodiclofen.

2. *Analytical method*. Adequate analytical methodology using LC/MS/MS detection is available for enforcement purposes.

3. *Magnitude of residues*. Complete residue data exists for spirodiclofen on these crops and crop groupings. The data support the requested tolerances.

B. Toxicological Profile

1. *Acute toxicity*. Oral and dermal LD_{50} values were >2,000 milligrams/kilogram body weight (mg/kg bwt). Inhalation LC_{50} values were >5,030 mg/m^3 air. Spirodiclofen was not irritating to rabbit skin or eyes but did cause skin sensitization in the Magnusson/Kligman maximization test in guinea pigs. Acute toxicity studies for spirodiclofen support an overall toxicity Category III.

2. *Genotoxicity*. Several genotoxicity tests were conducted to test for point-mutagenic activity, chromosome aberration *in vitro* and *in vivo*, and for DNA repair. All tests conducted were negative, indicating no evidence of mutagenic or genotoxic potential.

3. *Reproductive and developmental toxicity*. An oral developmental toxicity study in rat did not reveal any evidence of teratogenic potential. The maternal and developmental no observed adverse effect levels (NOAELs) were 1,000 mg/kg bwt/day. An oral developmental toxicity study in rabbits demonstrated a maternal NOAEL of 100 mg/kg bwt/day and did not reveal any teratogenic potential. A two-generation study in rats, with a parental toxicity NOAEL of 5.2 mg/kg bwt/day, did not reveal evidence of a primary reproductive toxicity potential. The reproductive NOAEL was 26.2 mg/kg bwt/day based on various clinical and histopathological findings at higher dose levels.

4. *Subchronic toxicity*. A subchronic toxicity feeding study with rats over 90 days demonstrated a NOAEL of 32.1 and 8.1 mg/kg bwt/day for males and females, respectively, based on effects on the lipid metabolism (decrease of triglycerides and cholesterol), liver effects (increase in transaminases) and adrenal effects (vacuolation) at the higher dose levels. A subchronic feeding study in mice over 13–weeks revealed no clinical toxicological signs. A NOAEL of 30.1 mg/kg bwt/day for females was observed (a clear NOAEL was not established for males). A 14–week feeding study in dogs demonstrated a NOAEL of 7.7 mg/kg bwt/day.

5. *Chronic toxicity*. A 24–month combined chronic feeding/carcinogenicity study in rats demonstrated a NOAEL of 14.7 mg/kg bwt/day. An oncogenicity study in the mouse revealed a NOAEL of 4.1 mg/kg bwt/day. Uterine and testicular oncogenicity was noted in the rat and hepatic neoplasia was observed in the mouse. A 1–year feeding study with dog demonstrated a NOAEL of 1.38 mg/kg bwt/day based on adrenal effects (vacuolization) as well as changes in circulating cholesterol and prostate weight at higher dose levels.

6. *Animal metabolism*. Metabolism and pharmacokinetic studies in the rat demonstrate that spirodiclofen residues are rapidly absorbed, metabolized and eliminated. The primary metabolite is the enol, which is formed by cleavage of the alkyl ester group, but numerous other metabolites are also formed.

7. *Metabolite toxicology*. The residue of concern is spirodiclofen and its enol metabolite, which is a product of hydrolysis in mammalian systems, as well as in the environment. Since the enol is inherently present after administration, toxicology data for this metabolite is completely supported by data obtained for spirodiclofen.

8. *Endocrine disruption*. The mammalian mode of action for spirodiclofen includes that classified as inhibitory to steroid biosynthesis, resulting in an indirect and endogenously-mediated toxicological response. Effects do not have an impact on fertility, reproduction, developmental or neuropathological parameters. Additional mechanistic studies with the chemical indicated that there is no direct effect on the endocrine system as there is no interaction with hormone receptors.

C. Aggregate Exposure

1. *Dietary exposure*. For the acute dietary analysis, the acute reference dose (aRfD), of 1.0 mg/kg/day was derived from a NOAEL of 100 mg/kg based on a prenatal developmental toxicity study in rabbits and the application of an uncertainty factor (UF) of 100 to account for inter-species extrapolation and intra-species variability. For the chronic dietary analysis, the cRfD, of 0.0138 mg/kg/day was derived from a NOAEL of 1.38 mg/kg/day based on a 1–year feeding study in dogs and the application of an UF of 100. An FQPA safety factor of 3 was also applied to the acute and chronic toxicology values, resulting in an acute population adjusted dose (aPAD) of 0.33 mg/kg/day and a chronic population adjusted dose (cPAD) of 0.0046 mg/kg/day. As a conservative measure, the aPAD and cPAD values were used for all population sub-groups when conducting the assessments.

i. *Food*. Assessments were conducted to evaluate the potential risks due to acute and chronic dietary exposure of the entire U.S. population and selected population subgroups to residues of spirodiclofen. These analyses cover the proposed uses on citrus fruits (grapefruits, lemons, and oranges), pome fruits (apples and pears), stone fruits (cherries, peaches, and plums), tree nuts (almonds and pecans) and grapes. For the acute dietary assessment, 100% crop treated and the highest or highest average field trial residues were assumed. For the chronic assessment, anticipated market share and average residue values were assumed. For the acute analysis, the most highly exposed population subgroup was non-nursing infants (< 1–year) with an exposure equal to 2.3% of the aPAD at the 95th percentile. Acute exposure of the overall U.S. population was equivalent to 0.45% of the aPAD. For the chronic dietary analysis, the most highly exposed population subgroup was children 1–6 years, with an exposure equal to 1.9% of the cPAD. Chronic exposure for the overall U.S. population equated to 0.6% of the cPAD. These acute and chronic dietary exposure estimates are well below EPA's level of concern for the overall U.S. population as well as the various population subgroups.

ii. *Drinking water*. Spirodiclofen is immobile in soil; and therefore, will not leach into ground water. Additionally, due to insolubility in water and a highly lipophilic nature, any residues in

surfacewater will rapidly bind to soil particles and remain with sediment where it is quickly degraded; and therefore, not contribute to potential dietary exposure from drinking water. The estimated environmental concentration (EEC) values for spirodiclofen and the enol metabolite were calculated using the tier I screening concentration in ground water (SCI-GROW), screening model for ground water estimates, and the tier II PRZM/EXAMS, models with index reservoir (IR) and percent crop area (PCA) factor for surface water estimates. The potential EEC levels were determined for the maximum usage intensity for each crop. The acute and chronic percent of population adjusted dose (%PAD) values associated with drinking water exposure were calculated based on a NOAEL of 100 mg/kg/day for acute exposure and 1.38 mg/kg/day for chronic exposure. The uncertainty factor (UF) considered in the analysis was 100X, and an additional Food Quality Protection Act (FQPA) safety factor of 3X was used both for acute and chronic calculations. The SCI-GROW estimated maximum ground water EEC level for spirodiclofen and enol combined was 0.003 ppb, suggesting that the compounds have a low potential to leach and contaminate the ground water under normal use. The highest estimate of the total acute concentration in surface water for spirodiclofen and enol combined was 6.04 parts per billion (ppb). The highest estimate of the total chronic concentration in surface water for spirodiclofen and enol combined was 0.67 ppb. The maximum %PAD calculated, 1.46%, was for infant/children chronic exposure. The low %PAD indicates that the human health risk associated with the presence of spirodiclofen and/or its enol metabolite in drinking water is minimal.

2. *Non-dietary exposure*. There are no indoor residential, indoor commercial or outdoor residential uses for spirodiclofen. Exposure and risk assessments were prepared for both mixer/loader-applicators and reentry workers during use of spirodiclofen on citrus, tree nuts and pome/stone fruit. Worker margins of exposure (MOE) estimates were conservatively based on a NOAEL of 1.38 mg/kg/day, maximum label rates, and a dermal absorption value of 2.3%. An occupational exposure uncertainty factor of 100 was used in the assessment. Margins of exposure total ranged from 360 to 69,000, indicating that the use of spirodiclofen poses no significant risk to workers who mix, load and apply this product, or to those who reenter treated areas to perform post-application activities. These data support the use of a single layer of clothing for mixer/loaders and applicators, and gloves for mixer/loaders, and a 12–hour REI for reentry workers.

D. Cumulative Effects

Spirodiclofen represents a new class of chemistry, ketoenoles. Bayer will submit information, if necessary, for EPA to consider concerning potential cumulative effects of spirodiclofen consistent with the schedule established by EPA at 62 **Federal Register** 42020 (Aug. 4, 1997) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*. Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to spirodiclofen from all label uses will utilize less than 5% of the RfD for chronic dietary exposures and that margins of exposure in excess of 360 exist for aggregate exposure to spirodiclofen for non-occupational exposure. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Margins of exposure of 100 or more (300 for infants and children) also, indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to spirodiclofen residues.

2. *Infants and children*. In assessing the potential for increased sensitivity of infants and children, data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity. None of these studies conducted with spirodiclofen indicated developmental or reproductive effects. The toxicology data which support these uses of spirodiclofen include the following: An oral developmental toxicity study in rat that did not reveal any evidence of teratogenic potential. Maternal and developmental NOAELs were 1,000 mg/kg bwt/day. An oral developmental toxicity study in rabbits demonstrated a maternal NOAEL of 100 mg/kg bwt/day and did not reveal any teratogenic potential. A two-generation study in rats, with a parental toxicity NOAEL of 5.2 mg/kg bwt/day, did not reveal evidence of a primary reproductive toxicity potential. The reproductive NOAEL was 26.2 mg/kg bwt/day based on various clinical and histopathological findings at higher dose levels. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children. The additional safety factor may be used when prenatal and postnatal threshold effects were observed in studies or to account for incompleteness of the toxicity database. Based on the toxicological data requirements, the data relative to prenatal and postnatal effects in children is complete. No indication of increased susceptibility of younger animals was observed in any of the above studies. For the population with the highest exposure, non-nursing infants <1 year old, the acute dietary exposure at the 95th percentile was 2.3% of the aPAD, equivalent to an MOE of 13,167. For the population described as children 1–6 years old, the exposure was 1.2% of the aPAD, equivalent to an MOE of 25,638. Acute exposure of the overall U.S. population was equivalent to 0.45% of the aPAD. For the chronic dietary analysis, the most highly exposed population subgroup was children 1–6 years old, with an exposure equal to 1.9% of the cPAD. Chronic exposure for the overall U.S. population equated to 0.6% of the cPAD.

F. International Tolerances

Codex maximum residue levels MRLs are not yet established for spirodiclofen.

[FR Doc. E4–270 Filed 2–17–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0026; FRL–7344–4]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only

in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0026. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP:

75437–EUP–2. Issuance. Great Lakes Fishery Commission (GLFC), 2100 Commonwealth Blvd., Suite 100, Ann Arbor, MI 48105. This EUP allows the use of 0.220 pounds of the male sea lamprey sex pheromone 3–ketopetromyzonol sulfate on 33 acres of river water to evaluate the control of sea lamprey. The program is authorized only in the State of Michigan. The EUP is effective from April 1, 2004 to October 31, 2004.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: February 5, 2004.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E4–304 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0027; FRL–7344–3]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address: *bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP:

75437–EUP–1. Issuance. Great Lakes Fishery Commision (GLFC), 2100 Commonwealth Blvd., Suite 100, Ann

Arbor, MI 48105. This EUP allows the use of 0.220 pounds of the sea lamprey migratory pheromone petromyzonol sulfate on 16.7 acres of river water to evaluate the control of sea lamprey. The program is authorized only in the States of Michigan, New York, and Vermont. The EUP is effective from April 1, 2004 to October 31, 2004.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: February 5, 2004.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E4–310 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7624–8]

National Environmental Laboratory Accreditation Program Seeking Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is announcing that the National Environmental Laboratory Accreditation Program's (NELAP's) Proficiency Testing Board has posted an application at *http://www.epa.gov/ttn/nelac,* ''recent additions'' for all interested parties wanting to serve NELAP in the capacity of Proficiency Testing Oversight Body (PTOB)/Proficiency Testing Provider Accreditor (PTPA). As instructed at the top of the application, an electronic and one hard copy of the application and all documentation must be sent to Dr. Michael W. Miller, Proficiency Testing Board Chairperson, NJ–DEP–OQA, P.O. Box 424, Trenton, NJ 08625, *michael.w.miller@dep.state.nj.us* and an electronic copy of the application only to Ms. Lara P. Autry, NELAP Director at *autry.lara@epa.gov*. The application portion must be postmarked and received electronically by close-of-business on Friday, February 27, 2004. All requested documentation associated with the application must be postmarked and received electronically by close-of-business on Friday, March 26, 2004.

Dated: February 11, 2004.

Lionel Dorsey Worthy, Jr.,

Chief, Landscape Characterization Branch, Emission Standards Division, National Exposure Research Laboratory, Office of Research and Development.

[FR Doc. 04–3455 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0006; FRL–7624–6]

Recovered Materials Advisory Notice V; Reopening of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft document for review; reopening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for the draft ''Recovered Materials Advisory Notice V,'' (RMAN V) which appeared in the **Federal Register** on December 10, 2003 (68 FR 68919). The initial public comment period for this proposed rule ended on February 9, 2004. The purpose of this notice is to reopen the comment period to end on March 19, 2004.

DATES: EPA will accept public comments on the draft RMAN V until March 19, 2004.

ADDRESSES: Comments may be submitted by mail to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006. Comments may also be submitted electronically or through hand delivery/courier; follow the detailed instructions as provided below in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information on the draft RMAN V, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of the draft RMAN V, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** for the draft RMAN V, which was issued on December 10, 2003 (68 FR 68919). In that document, EPA provided guidance to procuring agencies for purchasing the items proposed in the Comprehensive Procurement Guideline V proposed rule (CPG V), which was also issued on December 10, 2003 (68 FR 68813). In the CPG V proposed rule, EPA proposed to revise the current compost designation to include compost made from manure or biosolids and to designate fertilizers made from recovered organic materials. EPA also proposed to consolidate all compost designations under one item called ''compost made from recovered organic materials.'' During the initial public comment periods for the CPG V proposed rule and for the draft RMAN V, both of which ended on February 9, 2004, EPA received a request to extend the comment period of the CPG V proposed rule by 30 days. A copy of this request has been placed in the EPA Docket for the draft RMAN V. Consequently, in the proposed rules section of today's **Federal Register**, EPA is reopening the comment period for the CPG V proposed rule. Because of the close association between the CPG V proposed rule and the draft RMAN V, EPA is hereby reopening the draft RMAN V comment period, which will end on March 19, 2004.

How and To Whom Do I Submit Comments on the Draft RMAN V?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that

is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2003–0006. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–2003–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Disk or CD–ROM. You may submit comments on a disk or *CD–ROM* that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006.

By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Docket ID No. RCRA–2003–0006. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays).

Dated: February 10, 2004.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 04–3450 Filed 2–17–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–03]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the information collection entitled ''Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Loans,'' commonly known as the Monthly Interest Rate Survey or MIRS.

DATES: Interested persons may submit comments on or before April 19, 2004.

ADDRESSES: Send comments by e-mail to *comments@fhfb.gov*, by facsimile to 202/408–2580, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, ATTN: Public Comments. Comments will be available on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm*.

FOR FURTHER INFORMATION CONTACT: David Roderer, Financial Analyst, Risk Monitoring Division, Office of Supervision, , by e-mail at *rodererd@fhfb.gov*, by telephone at 202/408–2540, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of Information Collection

The Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), first provided data concerning a survey of mortgage interest rates in 1963. No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS although references to the MIRS did appear in several federal and state statutes. Responsibility for conducting the MIRS was transferred to the Finance Board upon dissolution of the FHLBB in 1989. *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, *codified at* 12 U.S.C. 1437 note, and tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433 (Aug. 9, 1989). In 1993, the Finance Board promulgated a final rule describing the method by which it conducts the MIRS. *See* 58 FR 19195 (Apr. 13, 1993), *codified at* 12 CFR 906.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

- Pursuant to their respective organic statutes, Fannie Mae and Freddie Mac use the MIRS results as the basis for the annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. *See* 12 U.S.C. 1454(a)(2) and 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. *See* Pub. L. 96–399, tit. III, sec. 313(a)–(b), 94 Stat. 1644–1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on ''the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB].'' *See* 12 U.S.C. 1454(a)(2) and 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. See FIRREA, tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.
- Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable rate mortgages (ARMs) remain available. *See* FIRREA, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, *codified at* 12 U.S.C. 1437 *note.* At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute a substantially similar ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. *See* 12 U.S.C. 1437 *note.*
- Congress indirectly connected the high cost area limits for mortgages

insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. *See* Pub. L. 103–327, 108 Stat. 2314 (Sept. 28, 1994), *codified at* 12 U.S.C. 1709(b)(2)(A)(ii).

• The Internal Revenue Service uses the MIRS data in establishing ''safe-harbor'' limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. *See* 26 CFR 6a.103A–2(f)(5).

• Statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin and the Virgin Islands, refer to, or rely upon, the MIRS. *See, e.g.*, Cal. Civ. Code 1916.7 and 1916.8 (mortgage rates); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Comp. Laws 445.1621(d) (mortgage index rates); Minn. Stat. 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. 138.056 (variable loan rates); V.I. Code Ann. tit. 11, sec. 951 (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published on the Finance Board's Web site (*http://www.fhfb.gov/mirs*) and in press releases, in the popular trade press, and in publications of other Federal agencies.

The likely respondents include a sample of 359 savings associations, mortgage companies, commercial banks and savings banks. The information collection requires each respondent to complete FHFB Form 10–91 on a monthly basis.

The OMB number for the information collection is 3069–0001. The OMB clearance for the information collection expires on June 30, 2004.

B. Burden Estimate

The Finance Board estimates the total annual number of respondents at 359, with 12 responses per respondent. The estimate for the average hours per response is 30 minutes. The estimate for the total annual hour burden is 2,154 hours (359 respondents × 12 responses × 0.5 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 12, 2004.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 04–3460 Filed 2–17–04; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2004–N–02]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the information collection entitled ''Affordable Housing Program (AHP)''.

DATES: Interested persons may submit comments on or before April 19, 2004.

ADDRESSES: Send comments by e-mail to *comments@fhfb.gov,* by facsimile to 202/408–2580, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, ATTN: Public Comments. Comments will be available on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Jr., Associate Director, Community Investment and Affordable Housing Division, Office of Supervision, by telephone at 202/408–2537 or by electronic mail at *mcleanc@fhfb.gov,* or Melissa L. Allen, Program Analyst, Community Investment and Affordable Housing Division, Office of Supervision, by telephone at 202/408–2524 or by electronic mail at *allenm@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations under which the 12 Federal Home Loan Banks (FHLBanks) must establish an Affordable Housing Program (AHP) to make subsidized advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j). Section 10(j) also establishes the standards and requirements for making subsidized AHP advances to FHLBank members. Part 960 of the Finance Board regulations implements the statutory requirements and authorizes the FHLBanks to make AHP funding decisions. *See* 12 CFR part 951.

The information collection contained in part 951 is used by the FHLBanks to determine whether an AHP applicant satisfies the statutory and regulatory requirements to receive subsidized advances or direct subsidies under the AHP. The Finance Board requires and uses the information, through examination of the FHLBanks, to ensure that FHLBank funding decisions, and the use of the funds awarded, are consistent with statutory and regulatory requirements.

The OMB number for the information collection is 3069–0006. The OMB clearance for the information collection expires on June 30, 2004.

The likely respondents include applicants for AHP funding.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 7,720, with 1.39 responses per respondent. The estimate for the average hours per response is 6.1 hours. The estimate for the total annual hour burden is 65,461 hours (7,720 respondents × 1.39 responses per respondent × 6.1 hours per response).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to

enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 12, 2004.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 04–3461 Filed 2–17–04; 8:45 am]

BILLING CODE 6725–01–P

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, February 23, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, February 13, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–3661 Filed 2–13–04; 3:58 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: World Trade Center Responder Health Consortium, Request for Applications OH–04–004

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): World Trade Center Responder Health Consortium, Request for Applications OH–04–004.

Times and Dates:

6 p.m.–6:30 p.m., March 3, 2004 (open).
6:30 p.m.–8 p.m., March 3, 2004 (closed).
9 a.m.–5 p.m., March 4, 2004 (closed).

Place: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001, telephone (202) 582–1234.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–04–004.

Contact Person for More Information: Price Connor, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, Office of Extramural Programs CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, MS E–74, Telephone (404) 498–2511.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 10, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–3425 Filed 2–17–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee meeting.

Times and Dates:

8:30 a.m.—5 p.m., March 4, 2004.
8:30 a.m.—4 p.m., March 5, 2004.

Place: Westin Peachtree Plaza, 210 Peachtree St. NW., Atlanta, GA 30303.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include an overview of issues related to public reporting of nosocomial infection rates; healthcare preparedness; influenza (avian and human); infection control in ambulatory care settings; strategies for surveillance of healthcare-associated infections; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Michele L. Pearson,M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE., M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 11, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–3424 Filed 2–17–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10109]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration and is required in order to meet the demands of new legislation. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

This Hospital Reporting Initiative will collect quality data to achieve the following: (1) Provide useful and valid information about hospital quality to the public; (2) provide hospitals a sense of predictability about public reporting expectations; (3) begin to standardize data and data collection mechanisms; and (4) foster hospital quality improvement. This information is an important tool for individuals to use in making decisions about their health care coverage. This effort will assist beneficiaries by providing comparison information for consumers who need to select a hospital. It will also serve as a way of encouraging accountability of hospitals for the care they provide. This will allow consumers to make ''apples to apples'' comparisons among hospitals, allow hospitals and hospital chains to self-compare, and provide state oversight officials with valuable data. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provides monetary incentives for hospitals to submit specific quality data. Due to the timeframe imposed by the recent legislation, CMS is requesting emergency review in order to meet the deadlines established by the legislation.

CMS is requesting OMB review and approval of this collection by May 1, 2004, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by March 18, 2004.

Type of Information Collection Request: New collection; *Title of Information Collection:* Hospital Reporting Initiative—Hospital Quality Measures; *Use:* There is a growing consensus among a broad array of federal, state, business, industry, union, employer, and consumer stakeholders around the importance of public reporting of hospital quality measures, including those that measure clinical outcomes and the patient's perception of care. Over time, public reporting will give consumers needed information about the health care system that may help them make more informed decisions about their care. Valid, reliable, comparable and salient quality measures have been shown to provide a potent stimulus for clinicians and providers to improve the quality of the care they provide. This reporting initiative is a significant step toward a more informed public and sustained health care quality improvement for Medicare beneficiaries; *Form Number:* CMS–10109 (OMB#: 0938–NEW); *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 4,600; *Total Annual Responses:* 4,600; *Total Annual Hours:* 239,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by March 18, 2004:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, CMS–10109, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850
and,
Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, Desk Officer, Fax # 202–395–6974.

Dated: February 9, 2004.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–3418 Filed 2–17–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Children and Families, with the authority to redelegate to the Commissioner, Administration on Developmental Disabilities, which may be further redelegated, the following authority vested in the Secretary of Health and Human Services.

Authority Delegated

Authority to administer the Developmental Disabilities Assistance and Bill of Rights Act of 2000, (The Act), Pub. L. 106–402, 114 Stat. 1677 (2000), 42 U.S.C. 15001 *et seq.,* and as amended, hereafter.

Limitations

1. This delegation shall be exercised under the Department's existing delegation and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all

Administration for Children and Families authorities.

3. I hereby affirm and ratify any actions taken by the Assistant Secretary for Children and Families, or any other Administration for Children and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Effect on Existing Delegations

This delegation supersedes the memorandum dated August 20, 1991, ''Delegation of Authority for the Developmental Disabilities Program,'' which was published at 56 FR 42332–42354, dated August 27, 1991.

Effective Date

This delegation is effective immediately.

Dated: February 9, 2004.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 04–3445 Filed 2–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Children and Families, with the authority to redelegate to the Commissioner, Administration on Developmental Disabilities, which may be further redelegated, the following authority vested in the Secretary of Health and Human Services.

Authority Delegated

Authority to administer Title II, Subtitle D, Parts 2 and 5 of the Help America Vote Act of 2002, Pub. L. 107–252, 116 Stat 1666, 1698–1699, 1702–1703 (2002), 42 U.S.C. 15421–15425, 15461–15462, and as amended, hereafter.

Limitations

1. This delegation shall be exercised under the Department's existing delegation and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

3. I hereby affirm and ratify any actions taken by the Assistant Secretary for Children and Families, or any other Administration for Children and Families officials, which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Effective Date

This delegation is effective immediately.

Dated: February 9, 2004.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 04–3446 Filed 2–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0045]

Agency Information Collection Activities; Proposed Collection; Comment Request; Health and Diet Survey—2004 Supplement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary consumer survey to gauge consumer understanding of diet-disease relationships, particularly those related to saturated fats, trans fatty acids, and omega-3 fatty acids, and consumer attitudes toward diet, health, and physical activity.

DATES: Submit written or electronic comments on the collection of information by April 19, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Health and Diet Survey—2004 Supplement

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)). The Health and Diet Survey—2004 Supplement will provide FDA with information about consumers' knowledge of dietary fats and the risk of coronary heart disease as well as consumers' attitudes toward diet, health, and physical activity. A total of 2,200 adults in the 50 states and the District of Columbia will be interviewed by telephone. Participation will be voluntary. The survey will collect information concerning the following items: (1) Knowledge of the relationships between the risk of heart disease and dietary fats, including

saturated fat, trans fatty acids, hydrogenated oil, omega-3 fatty acids, monounsaturated fats, and polyunsaturated fats; (2) attitudes toward diet, health, and physical activity; and (3) demographics and health status.

The agency has established specific targets to improve consumer understanding of diet-disease relationships, and in particular, the relationships between dietary fats and the risk of coronary heart disease, the leading cause of death in the United States. FDA intends to evaluate and track consumer understanding of heart-healthy and heart-harmful fats (saturated fat, trans fatty acids, and omega-3 fatty acids) as initial outcome measures of its achievement in improving public health. The primary purpose of the information collected in the survey will be to gauge current levels of consumer understanding. The establishment of a baseline of consumer understanding will be useful for the development of performance indicators to identify and measure incremental improvement in consumer understanding. A secondary purpose of the information will be to increase the agency's understanding of consumers' attitudes toward diet, health, and physical activity. This information will provide insight for the exploration of effective communication strategies and messages to assist consumers in making informed dietary and lifestyle choices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	27	1	27	0.5	13.5
Screener	6,000	1	6,000	0.02	120
Survey	2,000	1	2,000	0.17	340
Survey (''initial refusers'')	200	1	200	0.08	16
Total					490

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with previous consumer surveys. Prior to the administration of the survey, the agency plans to conduct a pretest of the final questionnaire to examine and reduce potential problems in survey administration The pretest will be conducted in three waves, each with nine respondents. The agency will use a screener to select an eligible adult respondent in each household to participate in the survey. Target sample size of the survey is 2,000 respondents who complete the interview. The agency, as part of an effort to increase survey participation, plans to re-contact and complete the interview with prospective respondents who refuse to participate at initial contacts. Two hundred of those who refuse for the second time, defined as ''initial refusers,'' will be administered a shorter interview about their knowledge of saturated fat, trans fatty acids, omega-3 fatty acids, and the risk of coronary heart disease.

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3411 Filed 2–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0483]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 19, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling Regulations—21 CFR Parts 101, 102, 104, and 105 (OMB Control Number 0910–0381)—Extension

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations under parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and under sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of

unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling.

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for specific products, including baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another ''reference'' food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of food products, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14 provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices.

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 provides for the use of nutrient content claims for butter, and cross-references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions.

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State, or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for

particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-references several labeling provisions in part 101, but it contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight. The disclosure and other information collection requirements in the previously mentioned regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

Description of Respondents: Businesses or other for-profit organizations.

In the **Federal Register** of July 23, 2003 (68 FR 43533), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Sections and Parts	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital, Operating, and Maintenance Costs
101.3, 101.22, 102, and 104	17,000	1.03	17,500	0.5	8,750	0
101.4, 101.22, 101.100, 102, 104, and 105	17,000	1.03	17,500	1	17,500	0
101.5	17,000	1.03	17,500	0.25	4,375	0
101.9, 101.13(n), 101.14(d)(3), 101.62, and 104	17,000	1.03	17,500	4	70,000	$1,000,000
101.9(g)(9) and 101.36(f)(2)	12	1	12	4	48	0
101.9(j)(18) and 101.36(h)(2)	10,000	1	10,000	8	80,000	0
101.10	265,000	1.5	397,500	0.25	99,375	0
101.12(b)	29	2.3	66	1	66	$39,600
101.12(e)	25	1	25	1	25	0
101.12(g)	5,000	1	5,000	1	5,000	0
101.12(h)	5	1	5	80	400	$400,000
101.13(d)(i) and 101.67	200	1	200	1	200	0
101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	2,500	1	2,500	1	2,500	0
101.13(q)(5)	265,000	1.5	397,500	0.75	298,125	0
101.14(d)(2)	265,000	1.5	397,500	0.75	298,125	0
101.15	160	10	1,600	8	12,800	0
101.22(i)(4)	25	1	25	1	25	0
101.30 and 102.33	1,500	3.3	5,000	1	5,000	0
101.36	300	40	12,000	4	48,000	$15,000,000
101.42 and 101.45	72,270	1	72,270	0.5	36,135	0
101.45(c)	5	4	20	4	80	0
101.69	3	1	3	25	75	0

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR Sections and Parts	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital, Operating, and Maintenance Costs
101.70	3	1	3	80	240	$400,000
101.79(c)(2)(ii)(D)	1,000	1	1,000	0.25	250	0
101.79(c)(2)(iv)	100	1	100	0.25	25	0
101.100(d)	1,000	1	1,000	1	1,000	0
101.105 and 101.100(h)	17,000	1.03	17,500	0.5	8,750	0
101.108	0	0	0	40	0	0
Total					996,869	$16,800,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Sections and Parts	No. of Recordkeepers	Annual Frequency per Recordkeepers	Total Annual Records	Hours per Record	Total Hours
101.12(e)	25	1	25	1	25
101.13(q)(5)	265,000	1.5	397,500	0.75	298,125
101.14(d)(2)	265,000	1.5	397,500	0.75	298,125
101.22(i)(4)	25	1	25	1	25
101.100(d)(2)	1,000	1	1,000	1	1,000
101.105(t)	100	1	100	1	100
Total					597,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of January 6, 1993 (58 FR 2927), FDA published a document based on these estimates entitled ''Regulatory Impact Analysis of the Final Rules to Amend the Food Labeling Regulations,'' which is the agency's most recent comprehensive review of food labeling costs. The estimates are also based on agency communications with industry and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E4–303 Filed 2–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Animal Drug User Fee Rates for Applications for Fiscal Year 2004 and Payment Procedures

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for application fees for fiscal year (FY) 2004 and payment procedures for those fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA), Public Law 108–130, authorizes FDA to collect user fees for certain animal drug applications, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug submissions. This document establishes the application fee rates for FY 2004. A

separate document will be published in the **Federal Register** establishing fee rates and payment procedures for annual product, establishment, and sponsor fees for FY 2004.

The application fee rates are $61,000 for an animal drug application and $30,500 for a supplemental animal drug application for which safety or effectiveness data are required. (In this document, supplemental animal drug applications are referred to as ''supplements''; animal drug applications and supplemental animal drug applications are collectively referred to as ''applications''.) These rates are effective for applications submitted on or after September 1, 2003, and will remain in effect through September 30, 2004. FDA may begin to collect these fees now since the President signed Public Law 108–199, appropriating FY 2004 animal drug user fee revenues, on January 23, 2004. FDA will issue invoices for all fees payable for applications submitted between September 1, 2003, and March 31, 2004. Those invoices will be due and payable within 30 days of issuance. Subsequently, fees for animal drug applications and supplemental animal drug applications received on or after April 1, 2004, must be paid at the time the applications are submitted. Applications will not be accepted for review until full payment of all fees owed is received. Payment instructions and answers to anticipated questions are also provided in this document.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/oc/adufa* or contact Robert Miller, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 301–827–5436. For general questions, you may also e-mail the Center for Veterinary Medicine at: *cvmadufa@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the act (21 U.S.C. 379j–12), establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions. (See 21 U.S.C. 379j–12(a).) When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FY 2004 through FY 2008, the act establishes aggregate yearly revenue amounts for each of these fee categories. Revenue amounts established for years after FY 2004 are subject to adjustment for inflation and workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for inflation and workload.

This document establishes fee rates for FY 2004 for application fees. These fees are effective on September 1, 2003, and will remain in effect through September 30, 2004. A separate document will be published in the **Federal Register** providing rates and payment procedures for product, establishment, and sponsor fees.

II. Application Fee Calculations for FY 2004

ADUFA specifies that the aggregate revenue amount for FY 2004 for animal drug application fees and supplemental animal drug application fees is $1,250,000, before any adjustments are made. (See 21 U.S.C. 379j–12(b)(1).) The terms animal drug applications and supplemental animal drug applications are defined in 21 U.S.C. 379j–11(1) and (2). Since FY 2004 is the first year of the program, there are no adjustments for workload or inflation; however, these adjustments are made to the statutory revenue amounts each year after FY 2004. (See 21 U.S.C. 379j–12(c)(1) and (2).)

A. Application Fee Revenues and Number of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be established so that they will generate the fee revenue amounts specified in the statute—$1,250,000 in FY 2004, $2,000,000 in FY 2005, and $2,500,000 in FYs 2006, 2007, and 2008. (See 21 U.S.C. 379j–12(b)(1).) The fee for a supplemental animal drug application for which safety or effectiveness data are required is to be set at 50 percent of the animal drug application fee. (See 21 U.S.C. 379j–12(a)(1)(A)(ii).)

To set animal drug application fees and supplemental animal drug application fees to realize $1,250,000, FDA must make some assumptions about the number of fee-paying applications it will receive in FY 2004.

The agency knows the number of applications that have been submitted in previous years, but that number fluctuates significantly from year to year. Further, it is possible that the user fee program will affect the number of applications submitted in FY 2004, exacerbating the fluctuation that is normally experienced. In addition, the agency does not have data on the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. For these reasons, in estimating the application fee for FY 2004, FDA is assuming that the number of applications that will pay fees in FY 2004 will be 70 percent of the lower of the average number of applications submitted over the past 3 years or the number submitted in the most recent year, whichever is lower. This should account both for the effect of fluctuations in the numbers of applications submitted and for the effect of fee waivers or reductions that FDA estimates will be granted. Based on experience with other application user fee programs, FDA believes that this is a reasonable basis for estimating the number of fee-paying applications in the first year of this program.

Over the past 3 years, the average number of animal drug applications that would have been subject to the full fee was 23.3, and the number for the most recent year was 27. Over this same period, the average number of supplements that would have been subject to half of the full fee was 18.3, and the number for the most recent year was 12.

Thus, for FY 2004, FDA estimates that it will receive 16.3 fee-paying animal drug applications (70 percent of the 3-year average of 23.3) and 8.4 fee-paying supplemental animal drug applications (70 percent of the 12 for the most recent year).

B. Fee Rates for FY 2004

FDA must set the fee rates for FY 2004 so that the estimated 16.3 animal drug applications that pay the full fee and the estimated 8.4 supplements that pay half of the full fee will generate a total of $1,250,000. To generate this amount will require that the fee for an animal drug application, rounded to the nearest hundred dollars, will be $61,000, and the fee for a supplemental animal drug application for which safety or effectiveness data are required will be $30,500.

C. Adjustment for Excess Collections

Under the provisions of ADUFA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce the adjusted aggregate revenue amount in a subsequent year by that excess amount (21 U.S.C. 379j–12(g)(4)). No

adjustments under this provision are required for fees assessed in FY 2004.

III. Procedures for Paying Application Fees

FDA requests that you follow the listed steps, on or after April 1, 2004, before submitting an animal drug application or supplement that is subject to a fee. Please pay close attention to these procedures to ensure that FDA associates the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Create a User Account and Password

For security reasons, each firm submitting an application will be assigned an organization identification number, and users will also be required to set up a user account and password the first time they use this Web site. To create a new account, log onto the ADUFA Web site at *http://www.fda.gov/oc/adufa* and, under the ''Forms'' heading, click on the link ''User Fee Cover Sheet.'' Online instructions will walk you through this process. It may take a day or two to get the organization number and have the user account and password established.

B. Step Two—Create an Animal Drug User Cover Sheet, Transmit It To FDA, and Print a Copy

After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the Cover Sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy that shows your unique payment identification number.

C. Step Three—Mail Payment and a Copy of the Printed Animal Drug User Fee Cover Sheet to the Following St. Louis Address

•Payment will only be accepted in U. S. currency by check, bank draft, or U.S. postal money order payable to FDA. (The tax identification number of FDA is 53–0196965, should your accounting department need this information.)

•On your check, bank draft, or U.S. postal money order, please write your application's unique payment identification number, beginning with the letters AD followed by the number from the upper right-hand corner of your completed animal drug user fee cover sheet.

•Mail the payment and a copy of the completed animal drug user fee cover sheet to the following address:

Food and Drug Administration, P.O. Box 953877, St. Louis, MO 63195–3877.

If you prefer to send a check by a courier such as Federal Express or United Parcel Service, the courier may deliver the check and printed copy of the cover sheet to the following address:

U.S. Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101.

(Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4821. This telephone number is only for questions about courier delivery.)

It is helpful if the fee arrives at the U.S. Bank at least 2 days before the application arrives at FDA's Center for Veterinary Medicine (CMV). FDA records the official application receipt date as the later of the following information:

• The date the application was received by FDA's CVM, or

• The date U.S. Bank notifies FDA that your check in the full amount of the payment due has been received. U.S. Bank is required to notify FDA within 1 working day, using the payment identification number described in the previous paragraphs.

D. Step Four—Submit Your Application to FDA With a Copy of the Completed Animal Drug User Fee Cover Sheet

Please submit your application and a copy of the completed animal drug user fee cover sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

IV. Are All Animal Drug Applications and Supplements Subject to Fees?

No. The following are examples of applications and submissions that do not require an application fee:

• Any type of investigational animal drug submission, as that term is defined in 21 U.S.C. 379j–11(5).

• Abbreviated new animal drug applications submitted under 21 U.S.C. 360b(b)(2).

• Supplemental new animal drug applications for which safety or effectiveness data are not required. (See 21 U.S.C. 379j–12(a)(1)(A)(ii).)

• A resubmitted animal drug application or supplement, for the same product submitted by the same person, for which an application was previously filed and for which a fee was paid, but which was not approved or was withdrawn without waiver or refund, as provided by 21 U.S.C. 379j–12(a)(1)(C).

• Annual (or other periodic) reports required under an approved new animal drug application.

If you are unsure of whether a planned application or submission will be subject to an ADUFA user fee, see **FOR FURTHER INFORMATION** section of this document.

V. May Some Animal Drug Application or Supplement Fees Be Waived or Reduced? How Do I Apply For Such Waivers or Reductions?

FDA will grant a waiver or reduction of one or more fees when the agency finds that:

• The assessment of the fee would present a significant barrier to innovation because of limited resources or other circumstances. (See 21 U.S.C. 379j–12(d)(1)(A).)

• Fees exceed the costs (both anticipated present and future costs of reviewing animal drug applications. (See 21 U.S.C. 379j–12(d)(1)(B).)

• The animal drug is intended solely for use in either a type C free-choice medicated feed or a type B medicated feed intended for use in the manufacture of type C free choice medicated feeds. (See 21 U.S.C. 379j–12(d)(1)(C).)

• The animal drug application or supplement is intended solely to provide for a minor use or minor species indication. (See 21 U.S.C. 379j–12(d)(1)(D).)

• The animal drug application is the first ever submitted by a small business. (See 21 U.S.C. 379j–12(d)(1)(E) and 21 U.S.C. 379j–12(d)(3).)

Note that all of the previously mentioned situations require the applicant to submit a written request to the agency for a waiver or reduction not later than 180 days after the fee is due. (See 21 U.S.C. 379j–12(i).) Also note that the application fee must be paid in full before the application is submitted or the application will not be accepted for filing. (See 21 U.S.C. 379j–12(a)(1)(C) and 21 U.S.C 379 j–12(e).) If FDA grants a waiver or reduction before you have submitted the application, then you should submit a copy of the document granting the waiver or reduction both with the application and, if applicable, with the check for a reduced amount sent separately to the bank. If FDA grants a waiver or reduction after you have submitted the application and paid its associated fee, FDA would make the appropriate refund. FDA will provide information on how to apply for any of the previously stated waivers or reductions on ADUFA's Web site at *http://www.fda.gov/oc/adufa*, under the ''Fee Waivers and Reductions'' link.

VI. When Do I Submit a Fee For an Application I Submitted On or After September 1, 2003, and Before April 1, 2004?

You must pay a fee for any animal drug application or supplemental animal drug application subject to a fee that you submitted on or after September 1, 2003 (21 U.S.C. 379j–12(a)(1)(A)). FDA will issue invoices to all applicants who submitted animal drug applications and supplemental animal drug applications on or after September 1, 2003, and through March 31, 2004. FDA will issue those invoices during April 2004, and payment will be due within 30 days of issuance date. FDA will include detailed payment instructions with the invoices. Please include the invoice numbers on all payments submitted in response to these invoices.

VII. When Do I Submit the Fee for Applications Submitted On or After April 1, 2004?

If you submit an animal drug application or supplemental animal drug application subject to fees on or after April 1, 2004, you must pay the fee for the application at or before the time the application is submitted. If you have not paid all ADUFA user fees owed, FDA will consider the application incomplete and will not accept it for review (21 U.S.C. 379j–12(e)).

VIII. Product, Establishment, and Sponsor Fees to be Established Soon

A separate document will be published in the **Federal Register** providing the rates and payment procedures for establishment, product, and sponsor fees. After that document has been published in the **Federal Register**, invoices will be issued for the FY 2004 establishment, product, and sponsor fees.

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3410 Filed 2–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0047]

Determination That Chlorthalidone Tablets and Seven Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the eight drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) for the drug products, and it will allow FDA to continue to approve ANDAs for the products.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved or, (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that referred to the listed drug have been approved. Section 314.161(d) provides that if FDA determines that the listed drug was removed from sale for safety or effectiveness reasons, the agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

The holders of the applications listed in table 1 of this document have informed FDA that the drug products have been withdrawn from sale. (As requested by the applicants, FDA withdrew approval of NDA 17–503 for COMBIPRES and ANDA 60–462 for GARAMYCIN in the **Federal Register** of August 18, 2003 (68 FR 49481)).

TABLE 1

Application No.	Drug	Applicant
12–283	HYGROTON (chlorthalidone) Tablets, 25 and 50 milligrams (mg).	Aventis Pharmaceuticals, 300 Somerset Corporate Blvd., Bridgewater, NJ 08807–2854.
17–503	COMBIPRES (clonidine hydrochloride (HCl); chlorthalidone) Tablets, 0.1 mg/15 mg, 0.2 mg/15 mg and 0.3 mg/15 mg.	Boehringer Ingelheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877–0368.

TABLE 1—Continued

Application No.	Drug	Applicant
17–884	CHRONULAC (lactulose) Oral Solution, 10 grams/15 milliliter (mL).	Aventis Pharmaceuticals, Inc.
18–581	SODIUM NITROPRUSSIDE Injection, 50 mg/vial.	Elkins-Sinn, Inc., Two Esterbrook Lane, Cherry Hill, NJ 08003–4099.
20–058	THIOPLEX (thiotepa) Injection, 15 mg/vial.	Immunex Corp., 51 University St., Seattle, WA 98101–2936.
50–621	SUPRAX (cefixime) Tablets, 200 and 400 mg.	Lederle Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
50–622	SUPRAX (cefixime) Powder for Oral Suspension, 100 mg/5 mL.	Do.
60–462	GARAMYCIN (gentamycin sulfate) Topical Cream, 0.1 percent.	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. Approved ANDAs that refer to the NDAs and ANDA listed in this document are unaffected by the withdrawal of the products subject to those NDAs and ANDA. Additional ANDAs for the products may also be approved by the agency.

Dated: February 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3414 Filed 2–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0001]

Global Harmonization Task Force, Study Groups 1, 2, 3, and 4; New Proposed and Final Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of several proposed and final documents that have been prepared by Study Groups 1, 2, 3, and 4 of the Global Harmonization Task Force (GHTF). These documents are intended to provide information only and represent a harmonized proposal and recommendation from the GHTF Study Groups that may be used by governments developing and updating their regulatory requirements for medical devices. These documents are intended to provide information only and do not describe current regulatory requirements; elements of these documents may not be consistent with current U.S. regulatory requirements. FDA is requesting comments on these documents.

DATES: Submit written or electronic comments on any of the documents by May 18, 2004. After the close of the comment period, written or electronic comments may be submitted at any time to the contact persons listed in this document.

ADDRESSES: Submit written comments on the documents to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the docket number found in brackets in the heading of this document. If you do not have access to the Internet, submit written requests for single copies on a 3.5″ diskette of the document to the Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. See the **ELECTRONIC ACCESS** section for information on electronic access to these documents.

FOR FURTHER INFORMATION CONTACT:

For Study Group 1: Ginette Michaud, GHTF, Study Group 1, Office of In Vitro Diagnostic Devices (HFZ–440), Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, ext 157;

For Study Group 2: Deborah Yoder, GHTF, Study Group 2, Office of Surveillance and Biometrics (HFZ–520), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2985;

For Study Group 3: Kimberly Trautman, GHTF, Study Group 3, Office of Compliance (HFZ–341), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD. 20850, 301–594–4659, ext. 126;

For Study Group 4: M. Christine Nelson, GHTF, Study Group 4, Office of Health Industry Programs (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 128.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements. In September 1992, a meeting was held in Nice, France by senior regulatory officials to evaluate international harmonization. At this

time it was decided to form a GHTF to facilitate harmonization. Subsequent meetings have been held on a yearly basis in various locations throughout the world.

The objective of the GHTF is to encourage convergence at the global level of regulatory systems of medical devices in order to facilitate trade while preserving the right of participating members to address the protection of public health by regulatory means considered most suitable. One of the ways this objective is achieved is by identifying and developing areas of international cooperation in order to facilitate progressive reduction of technical and regulatory differences in systems established to regulate medical devices. In an effort to accomplish these objectives, the GHTF has formed four study groups to draft documents and carry on other activities designed to facilitate global harmonization. This notice is a result of documents that have been developed by all four Study Groups (1, 2, 3, and 4).

Study Group 1 was initially tasked with the responsibility of identifying differences between various regulatory systems. In 1995, the group was asked to propose areas of potential harmonization for premarket device regulations and possible guidance that could help lead to harmonization. As a result of their efforts, this group has developed SG1/N011R17, SG1/N015R22, SG1/N029R13, SG1/N041R6 and SG1/N044R4. SG1/N011R17 (proposed document) ''Summary Technical Documentation for Demonstrating Conformity to the Essential Principles of Safety and Performance of Medical Devices (STED)'' applies to all products that fall within the definition of a medical device that appears within the GHTF document entitled ''Information Document Concerning the Definition of the Term 'Medical Device' '' (SG1/N029R13, proposed document), other than those used for the in vitro examination of specimens derived from the human body. This guidance document provides guidance on Summary Technical Documentation (abbreviated to STED) for demonstrating conformity to the ''Essential Principles of Safety and Performance of Medical Devices'' (SG1/N020, final document). It describes the format for a globally harmonized STED and provides general recommendations on the content of the formatted elements.

SG1/N015R22 (proposed document) ''Principles of Medical Devices Classification'' applies to all products that fall within the definition of a medical device that appears within the GHTF document ''Information Document Concerning the Definition of the Term 'Medical Device' '' (SG1/N029R13, proposed document), other than those used for the in vitro examination of specimens derived from the human body. The purpose of this document is to assist a manufacturer to allocate its medical device to an appropriate risk class using a set of harmonized rules.

SG1/N029R13 (proposed document) ''Information Document Concerning the Definition of the Term 'Medical Device' '' applies to all products that fall within the definition of a medical device, including those used for the in vitro examination of specimens derived from the human body. It provides a summary of the common ground found in the definition of the term ''medical device'' in different jurisdictions.

SG1/N041R6 (proposed document) ''Essential Principles of Safety and Performance of Medical Devices (Including In Vitro Diagnostic Devices)'' applies to all products that fall within the definition of a medical device that appears within the GHTF document ''Information Document Concerning the Definition of the Term 'Medical Device' '' (SG1/N029R13, proposed document), including those used for the in vitro examination of specimens derived from the human body. The purpose of this document is to describe generic product performance criteria, collectively referred to as ''essential principles'' that may be used to assess the safety of a particular medical device.

SG1/N044R4 (proposed document) ''Role of Standards in the Assessment of Medical Devices (Including In Vitro Diagnostic Devices)'' applies to all products that fall within the definition of a medical device that appears within the GHTF document ''Information Document Concerning the Definition of the Term ''Medical Device'' (SG1/N029R13, proposed document), including those used for the in vitro examination of specimens derived from the human body. Its purpose is to describe the role of technical standards during the design of a medical device, as well as the role of standards in demonstrating that a device conforms to ''Essential Principles of Safety and Performance of Medical Devices'' (SG1/N020, final document).

Study Group 2 was initially tasked with the responsibility of developing guidance documents that will be used for the exchange of adverse event reports. As a result of their efforts, this group has developed SG2/N31R8 and SG2/N32R5. SG2/N31R8 (final document) ''Medical Device Postmarket Vigilance and Surveillance: Proposal for Reporting of Use Errors With Medical Devices by their Manufacturer or Authorized Representative'' provides information to manufacturers and authorized representatives on factors to consider regarding the reporting of adverse events that are associated with use error. SG2/N32R5 (final document) ''Medical Device Postmarket Vigilance and Surveillance: Universal Data Set for Manufacturer Adverse Event Reports'' identifies and defines the various data elements that a manufacturer or authorized representative should include when filing a postmarket adverse event report to the national competent authority.

Study Group 3 was initially tasked with the responsibility of developing guidance documents on quality systems. As a result of their efforts, this group has developed SG3/N99–10 and SG3/N15R6. ''Quality Systems—Process Validation Guidance,'' originally finalized in 1999, is being republished as ''GHTF/SG3/N99–10:2003 (Edition 2)'' after revisions due to the changes in ISO 13485:2003, which is utilized in some regulatory systems. The process validation guidance has been revised in sections 0 through 3.4, figure 1 and annex B. The revisions can be generalized in two categories: (1) Editorial revision of terminology to be consistent with ISO 13485:2003 (i.e., ''quality system'' to ''quality management system'' and ''design controls'' to ''design and development controls''), and (2) changes to figure 1 and the corresponding text to reflect the new process validation requirements found in clause 7.5.2 of ISO 13485:2003. This process validation guidance is intended to assist manufacturers in understanding quality management system requirements concerning process validation and has general applicability to manufacturing (including servicing and installation) processes for medical devices. The guidance provides general suggestions on ways manufacturers may prepare for and carry out process validations. This guidance does not suggest particular methods of implementation, and therefore, should not be used to assess compliance with quality management system requirements. Rather the intent is to expand on quality management system requirements with practical explanations and examples of process validation principles. Manufacturers can and should seek out/select technology-specific guidance on applying process validation to their particular situation.

SG3/N15R6 ''Risk Management as an Integral Part of the Quality Management System'' is intended to assist medical

device manufacturers with the integration of risk management concepts into their quality management system by providing practical explanations and examples. It is based on general principles of a quality management system and general principles of a risk management system and not on any particular standard or regulatory requirement. This document has general applicability to quality management systems for organizations providing medical devices. This document will discuss risks related to product safety, rather than other business risks. The integration of risk management into the quality management system is applicable to all stages of the life cycle of a medical device. This guidance does not suggest particular methods of implementation and therefore should not be used to assess or audit compliance with regulatory requirements.

Study Group 4 was initially tasked with the responsibility of developing auditing guidelines. These guidelines are intended to provide guidance on regulatory auditing of quality systems of medical device manufacturers. As a result of their efforts, this group has developed SG4/N30R6 (proposed document) entitled ''Guidelines for Regulatory Auditing of Quality Systems of Medical Device Manufacturers—Part 2: Regulatory Auditing Strategy.'' This document is intended to be used by regulatory auditing organizations and auditors as a guide for conducting medical device quality systems audits based on the process approach to quality management of ISO 13485:2003. Additional regulatory requirements and guidance will need to be considered, depending on the regulatory authorities who will receive and use the audit report. This guidance document applies to initial audits and to surveillance audits as they are defined in ''Guidelines for Regulatory Auditing of Quality Systems of Medical Device Manufacturers—Part I: General Requirements (SG4/N28R2)''—including the supplements—developed by GHTF Study Group 4 as a guide for auditing organizations.

These documents represent recommendations from the GHTF Study Groups and do not describe regulatory requirements. FDA is making these documents available so that industry and other members of the public may express their views and opinions.

II. Electronic Access

Persons interested in obtaining copies of these draft documents may also do so using the Internet. Updated on a regular basis, the CDRH home page includes device safety alerts (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video-oriented conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. Information on the GHTF may be accessed at *http://www.ghtf.org*.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding any of these documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and with the full title of these documents. The draft documents and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 2004.

Lillian J. Gill,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–3412 Filed 2–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0050]

Over-the-Counter Drug Products; Safety and Efficacy Review; Additional Dandruff Control Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of eligibility; request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call-for-data for safety and effectiveness information on the following conditions as part of FDA's ongoing review of over-the-counter (OTC) drug products: Piroctone olamine, 0.05 percent to 0.5 percent and 0.1 percent to 1.0 percent, for use as a dandruff control single active ingredient in leave-on and rinse-off dosage forms, respectively. FDA has reviewed a time and extent application (TEA) for these conditions and determined that they are eligible for consideration in its OTC drug monograph system. FDA will evaluate the submitted data and information to determine whether these conditions can be generally recognized as safe and effective (GRAS/E) for their proposed OTC use.

DATES: Submit data, information, and general comments by May 18, 2004.

ADDRESSES: Submit written comments, data, and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, data, and information to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule establishing criteria and procedures for additional conditions to become eligible for consideration in the OTC drug monograph system. These criteria and procedures, codified in § 330.14 (21 CFR 330.14), permit OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any marketing experience in the United States to become eligible for FDA's OTC drug monograph system. The term ''condition'' means an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use (§ 330.14(a)). The criteria and procedures also permit conditions that are regulated as cosmetics or dietary supplements in foreign countries but that would be regulated as OTC drugs in the United States to become eligible for the OTC drug monograph system.

Sponsors must provide specific data and information in a TEA to demonstrate that the condition has been marketed for a material time and to a material extent to become eligible for consideration in the OTC drug monograph system. When the condition is found eligible, FDA publishes a notice of eligibility and request for safety and effectiveness data for the proposed OTC use. The TEA that the agency reviewed (Ref. 1) and FDA's evaluation of the TEA (Ref. 2) have been placed on public display in the Division of Dockets Management (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. Information deemed confidential under 18 U.S.C. 1905, 5

U.S.C. 552(b), or 21 U.S.C. 331(j) was deleted from the TEA before it was placed on public display.

II. Request for Data and Information

The conditions piroctone olamine, 0.05 percent to 0.5 percent and 0.1 percent to 1.0 percent, as a dandruff control single active ingredient in leave-on and rinse-off dosage forms, respectively, will be evaluated for inclusion in the monograph for OTC drug products for the control of dandruff, seborrheic dermatitis, and psoriasis (21 CFR part 358, subpart H). Accordingly, FDA invites all interested persons to submit data and information, as described in § 330.14(f), on the safety and effectiveness of these conditions for FDA to determine whether they can be GRAS/E and not misbranded under recommended conditions of OTC use. The TEA did not include an official or proposed United States Pharmacopeia-National Formulary (USP–NF) drug monograph for piroctone olamine. According to § 330.14(i), an official or proposed USP–NF monograph for piroctone olamine must be included as part of the safety and effectiveness data for this ingredient. Interested parties should provide an official or proposed USP–NF monograph and safety and effectiveness data for both leave-on and rinse-off dosage forms containing this ingredient.

Interested persons should submit comments, data, and information to the Division of Dockets Management (see **ADDRESSES**) by May 18, 2004. Three copies of all comments, data, and information are to be submitted. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. Marketing Policy

Under § 330.14(h), any product containing the conditions for which data and information are requested may not be marketed as an OTC drug in the United States at this time unless it is the subject of an approved new drug application or abbreviated new drug application.

IV. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. TEA for piroctone olamine submitted by Keller and Heckman LLP on behalf of Clariant Gmbh., dated July 11, 2003.

2. FDA's evaluation and comments on the TEA for piroctone olamine.

Dated: February 10, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–3413 Filed 2–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: March 4, 2004.

Place: Building J, Room 103, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 9 a.m.—FICEMS Ambulance Safety Subcommittee; 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Counter-Terrorism Subcommittee and the Performance Technology Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, March 2, 2004, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *proman@natekinc.com*. This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 9 a.m. until 4 p.m. Members should call in around 9 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''430746#.''

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on June 3, 2004. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the June 3, 2004, FICEMS Committee Meeting.

Dated: January 20, 2004.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 04–3434 Filed 2–17–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–921–1410–BK–P]

Notice for Publication; Filing of Plat of Survey; Alaska

1. A plat of survey for the following described lands was officially filed in the Alaska State Office, Anchorage, Alaska, on the date indicated:

A plat representing the corrective dependent resurvey of line 1–2 of the Nome Townsite, Amended U.S. Survey No. 451; the dependent resurvey of line 4–5 of the Nome Townsite, Amended

U.S. Survey No. 451 and portions of Mineral Survey Nos. 410 and 1339; the survey of partition lines attached to the Nome Townsite, Amended U.S. Survey No. 451; the corrective meanders along Norton Sound in sections 26, 27, 28, 35, 36 and a portion of section 29; and the perpetuation of U.S. Location Monument 1C; all within Township 11 South, Range 34 West, Kateel River Meridian, Alaska, was accepted on October 3, 2003, and was officially filed January 14, 2004.

2. This survey was prepared at the request of the Bureau of Land Management, Division of Geomatics and Cadastral Services, and will immediately become part of the basic record for describing lands for all authorized purposes within this township.

3. This survey has been placed in the open files in the Alaska State Office and is available to the public as a matter of information. All inquires relating to these lands should be sent to the Alaska State Office, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599; 907–267–1403.

Daniel L. Johnson,

Chief, Branch of Field Surveys.

[FR Doc. 04–3426 Filed 2–17–04; 8:45 am]

BILLING CODE 1410–BK–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for new information collection.

SUMMARY: This document extends to March 23, 2004, the previous deadline of February 23, 2004, for submitting comments on the proposed new information collection published on December 24, 2003 (68 FR 74647), that concerns four new forms to collect information required under 30 CFR 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.'' The below forms will be used by all MMS Regional Offices:

- MMS–149, Assignment of Interest in Federal Pipeline Right-of-Way
- MMS–150, Assignment of Record Title Interest in Federal OCS Oil & Gas Lease
- MMS–151, Assignment of Operating Rights Interest in Federal OCS Oil & Gas Lease
- MMS–152, Relinquishment of Federal OCS Oil & Gas Lease.

DATES: Submit written comments by March 23, 2004.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference ''Information Collection 1010–NEW—Assignment Forms'' in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team at (703) 787–1600 to obtain a copy, at no cost, of the forms or regulations that require the subject collection of information. You may also print a copy of these forms from the MMS Web site: *http://www.gomr.mms.gov/homepg/lsesale/proposed_forms.html* under the heading ''Leasing.'' For more information on the forms themselves, contact Steven K. Waddell, Supervisor, Adjudication Unit, (504) 736–1710.

SUPPLEMENTARY INFORMATION: The MMS published a notice on proposed new information collection on December 24, 2003, (68 FR 74647). This notice concerns forms used to collect assignment, transfer, extension, and termination of lease information required under 30 CFR part 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.'' The Federal Government has been receiving and approving transfers of ownership interest in leases since the inception of the OCS Lands Act, as amended. Currently, owners of Federal offshore leases submit their own forms of Assignment and Relinquishment documents for approval by MMS. Occasionally, the information is incorrect and the intent of the parties is not clear as to the conveyance of ownership interest in the lease or pipeline right-of-way, causing MMS to return the assignment unapproved. These forms have been created to provide a standardized document that will be accepted in all MMS Regional offices; they can be easily prepared by industry and quickly approved by MMS.

To implement the Government Paperwork Elimination Act and to further streamline data collection, MMS is developing systems to provide electronic options for lessees and operators to use in submitting information and requesting approvals. These forms are part of that effort to allow electronic options for lessees and operators to use in submitting information and requesting approvals. In standardizing the input of this information, MMS is providing a means for rapid preparation by industry and reduced analytical time by MMS staff, therefore approving the transfers quicker.

MMS uses this information to track ownership of all offshore leases as to record title, operating rights, and ownership of pipelines, and whether or not the lease has been relinquished and available for the next lease sale. MMS uses the information to update the corporate database, which is in turn used to determine what leases are available for a lease sale. The information in this database is provided to the public via the internet. Without the information, MMS would not be able to track the ownership of leases and therefore not be able to identify responsible parties for the liabilities of the lease, which could total millions of dollars.

The MMS has held a public forum on the proposed forms at the Gulf of Mexico Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, on February 11, 2004. Additional time to develop comments after the meeting is being provided by this notice; therefore, we are extending the comment period for 30 more days to March 23, 2004. For further information, contact Steven K. Waddell, Supervisor, Adjudication Unit, (504) 736–1710.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: February 11, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–3459 Filed 2–17–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

Agency Holding the Meeting: International Trade Commission.

TIME AND DATE: February 23, 2004, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–1069 (Preliminary) (Outboard Engines from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before February 23, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before March 1, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: February 12, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–3549 Filed 2–12–04; 4:50 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 23, 2003, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
2, 5-dimethoxy-4-(n)-propylthiophenethylaminie (2C–T–7) (7348).	I
Alpha-methyltryptamine (AMT) (7432).	I
5-methoxy-N-, N-diisopropyltryptamine (5-MeO-DIPT) (7439).	I

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 04–3475 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 29, 2003, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50619 made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Dextropropoxphene (9273)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3481 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notices dated March 11, 2003, and published in the **Federal Register** on April 2, 2003 (68 FR 16088), dated April 3, 2003, and published in the **Federal Register** on April 15, 2003 (68 FR 18262), dated June 20, 2003, and published in the **Federal Register** on July 8, 2003 (68 FR 40686), and dated October 7, 2003, and published in the **Federal Register** on October 29, 2003 (68 FR 61698), Cody Laboratories, Inc., 331 33rd Street, Cody, Wyoming 82414, made application by letters and by renewals to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Meperidine (9230)	II
Oxymorphone (9652)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

On December 30, 2003, the firm requested that their registration be modified to reflect an address change to 601 Yellowstone Drive, Cody, Wyoming 82414. That modification was effected on January 8, 2004.

The firm plans to manufacture bulk materials for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Cody Laboratories, Inc. to manufacture the listed controlled substances is consistent with the public

interest at this time. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3482 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 25,2003, Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3480 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 25, 2003, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3476 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Envorcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 9, 2003, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal and letter to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Gamma–Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5–Trimethoxyamphetamine (7390).	I
4–Bromo–2–5–diethoxyamphetamine (7391).	I
4–Methyl–2,5–diethossyamphetamine (7395).	I
2,5–Dimethoxyamphetamine (7396).	I
2,5–Dimethoxy–4–ethylamphetamine (7399).	I
3,4–Methylenedioxyamphetamine (7400).	I
3,4–Methylenedioxy–N–ethylamphetamine (7404).	I
3,4–Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II

Drug	Schedule
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than March 19, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3478 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 25, 2003, Norac Corporation, 405 S Motor Avenue, PO Box 577, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of THC Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the controlled substances for formulation into pharmaceutical products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3479 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 3, 2003, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of THC Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3474 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 20, 2003, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal and on January 21, 2004, by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Morphine (9300)	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than April 19, 2004.

Dated: February 4, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–3477 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until April 19, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0004.

Form Number: NCUA 5300 and NCUA 5300SF.

Type of Review: Revision to the currently approved collection.

Title: Quarterly Call Report.

Description: The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Respondents: All Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 9,500.

Estimated Burden Hours Per Response: 6.6 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 250,800.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on February 11, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–3420 Filed 2–17–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Nominations for National Science Board Public Service Award

The National Science Board (NSB) Public Service Award Committee invites nominations for the 2004 NSB Public Service Award. Established by the Board in November 1996, the Award is presented annually in May to recognize people and organizations who have increased public understanding of science or engineering. The award may be given to an individual and to a group (a company, corporation, or organization). Members of the U.S. Government are not eligible. Accomplishments in science and engineering are helpful but not a primary consideration. Selection criteria and nomination guidelines can be found at *http://www.nsf.gov/nsb/awards/public/public.htm.*

A six member advisory committee evaluates nominations and makes recommendations to the National Science Board in March 2004. Nominations must be submitted by fax (703–292–9008) no later than February 29, 2004 to the Chairman, NSB Public Service Award Committee, National Science Foundation, 4201 Wilson Blvd, Room 1220, Arlington, VA 22230. Any questions should be directed to Mrs. Susan E. Fannoney, Executive Secretary to the Committee (703–292–8096).

For Further Information Contact: Michael P. Crosby, Ph.D., Executive Officer, NSB, (703) 292–7000.

Michael P. Crosby,

Executive Officer.

[FR Doc. 04–3387 Filed 2–17–04; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Nominations for Membership

The National Science Board (NSB) was established by the Congress in 1950 to serve both as an independent national science policy advisory body to the President and the Congress, and to oversee and guide the activities of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director who serves as an *ex officio* member.

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: ''The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation.''

The Board and the NSF Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, no later than March 31, 2004.

Any questions should be directed to Dr. Michael P. Crosby, NSB Executive Officer and NSB Office Director (703–292–7000) or Mrs. Susan E. Fannoney, Staff Assistant, NSB Office (703–292–8096).

For Further Information Contact: Michael P. Crosby, Executive Officer, NSB, (703) 292–7000.

Michael P. Crosby,

Executive Officer.

[FR Doc. 04–3386 Filed 2–17–04; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME: 9:30 a.m., Thursday, February 26, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is Open to the public.

MATTERS TO BE CONSIDERED:

77545B Aviation Accident Report—Loss of Pitch Control During Takeoff, Air Midwest (Doing Business as US Airways Express) Flight 5481, Raytheon (Beechcraft) 1900D, N233YV, Charlotte, North Carolina, January 8, 2003

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, February 20, 2004.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB Home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 13, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–3624 Filed 2–13–04; 1:54 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on March 1 and 2, 2004. An announcement of this meeting was originally made in the January 28, 2004 **Federal Register**. However, it is necessary to re-announce this meeting because the NRC staff has since determined that parts of the meeting must be closed to the public.

A sample of agenda items to be discussed during the public sessions includes: (1) Dose Reconstruction Subcommittee Findings in the St. Joseph Mercy Hospital Case; (2) Proposed Changes to Abnormal Occurrence Criteria; (3) Status of Rulemaking—Recognition of Specialty Board Certifications; and, (4) Defining Medical Events Involving Prostate Seed Implants. To review the agenda, *see http://www.nrc.gov/ reading-rm/doc-collections/ acmui/schedules/2004/* or contact *arw@nrc.gov.*

Date and Time for Closed Session Meeting: March 1, 2004, from 8 a.m. to 10 a.m. This session will be closed so that NRC staff and the ACMUI may discuss ethical issues and security-related issues.

Dates and Times for Public Meetings: March 1, 2004, from 10 a.m. to 5 p.m.; and March 2, 2004, from 8 a.m. to 9 a.m. and from 1 p.m. to 5 p.m.

Date and Time for Commission Briefing: March 2, 2004, from 9:30 a.m. until 11:30 a.m. The public meetings and the Commission briefing will take place at the addresses provided below.

Address for Public Meetings: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Auditorium, 11545 Rockville Pike, Rockville, MD 20852–2738.

Address for Commission Briefing: U.S. Nuclear Regulatory Commission, One White Flint North Building, Commissioners' Conference Room 1G16, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela R. Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals must be postmarked by February 23, 2004, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about March 22, 2004. Minutes of the meeting will be available on or about May 3, 2004.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* part 7.

Dated: February 11, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–3444 Filed 2–17–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 3, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, March 3, 2004—8:30 a.m.–10:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: February 11, 2004.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–3443 Filed 2–17–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATES: Weeks of February 16, 23; March 1, 8, 15, 22, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of February 16, 2004

Wednesday, February 18, 2004

9:30 a.m. Briefing on Status of Office of the Chief Financial Officer Programs, Performance, and Plans (Public Meeting) (Contact: Edward L. New, 301–415–5646).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 23, 2004—Tentative

Wednesday, February 25, 2004

9 a.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, February 26, 2004

9:30 a.m. Meeting with UK Regulators to Discuss Security Issues (Closed—Ex. 1).

1:30 p.m. Status of Davis Beese Lessons Learned Task Force Issues (Public Meeting) (Contact: Brendan Moroney, 301–415–3974).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 1, 2004—Tentative

Tuesday, March 2, 2004

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) and NRC Staff (Public Meeting) (Contact: Angela Williamson, 301–415–5030).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, March 3, 2004

9:30 a.m. 25th Anniversary Three Mile Island (TMI) Unit 2 Accident Presentation (Public Meeting) (Location: TWFN Auditorium, 11545 Rockville Pike) (Contact: Sam Walker, 301–415–1965).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2:45 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, March 4, 2004

1:30 p.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 8, 2004—Tentative

Tuesday, March 9, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Material Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of March 15, 2004—Tentative

There are no meetings scheduled for the week of March 15, 2004.

Week of March 22, 2004—Tentative

Tuesday, March 23, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Alan Levin, 301–415–6656).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, March 24, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1275).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, March 25, 2004

1:30 p.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting) (Contact: Jack Davis, 301–415–7256).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 12, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–3553 Filed 2–13–04; 9:42 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On February 3, 2004 (69 FR 5200), the **Federal Register** published the ''Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations.'' On page 5216, Southern Nuclear Operating Company, Inc., *et al.*, Vogtle Electric Generating Plant, Units 1 and 2, ''Amendment Nos. 130 and 108'' should read ''Amendment Nos. 130 and 109.''

Dated at Rockville, Maryland, this 10th day of February 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–3438 Filed 2–17–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Revision of the NRC Enforcement Policy: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 5, 2004 (69 FR 385)), that clarifies that enforcement action may be taken against non-licensees for violations of the Commission's regulations governing the packaging and transportation of radioactive material. This action is necessary to: (1) Include the deadline for submitting comments on the Enforcement Policy revision, which is March 19, 2004 and (2) correct the methods for providing comments.

FOR FURTHER INFORMATION CONTACT: Renée Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001, at (301) 415–2742 or e-mail *rmp@nrc.gov*.

SUPPLEMENTARY INFORMATION:

1. The **EFFECTIVE DATE** entry is corrected to read as follows:

EFFECTIVE DATE: October 1, 2004. Submit comments by March 19, 2004.

2. The **ADDRESSES** entry is corrected to read as follows:

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcrep@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of February 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 04–3442 Filed 2–17–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Clarification to Steam Generator Tube Integrity Event Reporting Guideline in NUREG–1022, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of clarification in reporting guideline for steam generator tube integrity event.

SUMMARY: The U.S. Nuclear Regulatory Commission plans to make a clarification in the reporting guideline for serious steam generator tube degradation contained within Revision 2 to NUREG–1022, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73.'' The NRC intends to issue an errata to NUREG–1022, Revision 2. The purpose of this clarification is to ensure that the NRC receives timely notification of serious steam generator tube degradation.

SUPPLEMENTARY INFORMATION: In NUREG–1022, Revision 2, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73,'' steam generator tube degradation is characterized in Section 3.2.4(A)(3) as being seriously degraded if the tubing fails to meet the following two performance criteria: (A) Steam generator tubing shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cooldown and all anticipated transients included in the design specification) and design basis accidents. This includes retaining a margin of 3.0 against burst under normal steady state full power operation and a margin of 1.4 against burst under the limiting design basis accident concurrent with a safe shutdown earthquake. (B) The primary to secondary accident induced leakage rate for the limiting design basis accident, other than a steam generator tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all steam generators and leakage rate for an individual steam generator. The licensing basis accident analyses typically assume a 1 gallon per minute primary to secondary leak rate per steam generator, except for specific types of degradation at specific locations where the tubes are confined, as approved by the NRC and enumerated in conjunction with the list of approved repair criteria in the licensee's design basis documents. The first performance criteria is commonly referred to as the structural integrity performance criteria and the second criteria is commonly referred to as the accident induced leakage performance criteria. As written, NUREG–1022, Revision 2 implies that the principal safety barrier (*i.e.*, the steam generator tubes in this case) would not be considered seriously degraded if it had either structural or leakage integrity. This is contradictory to existing NRC regulations which require, in part, that the reactor coolant pressure boundary (which includes the steam generator tubes) be designed to permit periodic inspection and testing of important areas and features to assess both their structural and leak-tight integrity (refer to General Design Criterion 32 of Appendix A to 10 CFR part 50) and be designed and tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture (refer to General Design Criterion 14 of Appendix A to 10 CFR part 50). The regulations, therefore, indicate that both structural and leakage integrity criteria must be satisfied and not meeting either one of the two performance criteria should constitute serious degradation of the principal safety barrier. Accordingly, steam generator tube degradation should be considered serious if either of the two criteria specified in Section 3.2.4(A)(3) of NUREG–1022, Revision 2, are not satisfied.

The intended clarification involves changing the wording in Section 3.2.4(A)(3) of NUREG–1022, Revision 2 (page 39) from ''Steam generator tube degradation is considered serious if the tubing fails to meet the following two performance criteria'' to ''Steam generator tube degradation is considered serious if the tubing fails to meet either of the following two performance criteria.''

The NRC will consider any comments it receives pertaining to this intended change in NUREG–1022, Revision 2.

DATES: Comment period expires March 19, 2004. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T6–D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Samuel Lee at (301) 415–1061 or by E-mail to *ssl@nrc.gov*, or Ken Karwoski at (301) 415–2752 or by e-mail to *kjk1@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of February, 2004.

For the Nuclear Regulatory Commission.

William D. Beckner,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–3441 Filed 2–17–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49215; File No. SR–Phlx–2003–71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Participation Guarantees for Floor Brokers Representing Crossing and Facilitation Orders in Index Options

February 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. On January 9, 2004, Phlx submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1064, Crossing, Facilitation and Solicited Orders, which currently governs, among other things, the crossing of equity option orders by floor brokers. Specifically, the proposal would amend Commentary .02(i) and (iii) to Phlx Rule 1064 to provide a participation guarantee of 20% to floor brokers representing crossing and facilitation orders in index options.

The text of the proposed rule change follows. Additions are italicized; deletions are in brackets.

* * * * *

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)–(d) No change.

Commentary:

.01. No change.

.02. Firm Participation Guarantees. (i) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity *or index* option order of the eligible order size or greater (''original order''), the Floor Broker is entitled to cross a certain percentage of the original order with other orders that he is holding or in the case of a public customer order, with a facilitation order of the originating firm (*i.e.*, the firm from which the original customer order originated).

(ii) No change.

(iii) The percentage of the order which a Floor Broker is entitled to cross, after all public customer orders that were (1) On the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is determined as follows:

(A) *With respect to orders for equity options:* (i) 20% of the remaining contracts in the order if the order is traded at the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market; or ([B]*ii*) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

(B) *With respect to orders for index options, 20% of the remaining contracts in the order.*

(iv)–(x) No change.

.03. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a participation guarantee of 20% to floor brokers representing crossing and facilitation orders in index options.

Background. Currently, Phlx Rule 1064 sets forth, among other things, the procedures by which a floor broker holding a public customer order (''original order'') may cross it with either another customer order or orders from the same originating firm,[4] or a contra side order provided by the original firm from its own proprietary account ''facilitation order'').[5]

Under Exchange Rules 1064(a) and (b), a floor broker seeking to cross or facilitate buy and sell orders for the same options series must first bring the transaction to the trading floor and request markets from the trading crowd for all components of the order. After providing the crowd with the opportunity to make such markets, the floor broker must announce that he holds an order subject to crossing or facilitation, and then must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the Registered Options Traders in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to participate in part of the order, however, the crowd has priority and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to participate in the entire order, the floor broker will not be able to cross or facilitate any part of the order.

In May 2003, the Commission approved amendments to Phlx Rule 1064 that guarantee floor brokers representing crossing and facilitation orders in equity options with a size of at least 500 contracts the right to participate in a certain percentage of such orders.[6]

Currently, the participation guarantee applies to crossing and facilitation orders in equity options only. The percentage of the equity option order that a floor broker is entitled to cross after all public customer orders have been satisfied is determined as follows: (A) 20% of the remaining contracts in the order if the order is traded at the best bid or offer given by the crowd in response to the floor broker's initial request for a market; or (B) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the floor broker's initial request for a market.

Crossing and Facilitation Orders in Index Options. The instant proposal would extend the participation

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Ira Brandriss, Special Counsel, Division of Market Regulation (''Division''), Commission, dated January 8, 2004 (''Amendment No. 1''). The changes made by Amendment No. 1 have been incorporated into this notice.

[4] *See* Phlx Rule 1064(a).

[5] *See* Phlx Rule 1064(b).

[6] *See* Securities Exchange Act Release No. 47819 (May 8, 2003), 68 FR 25924 (May 14, 2003) (File No. SR–Phlx–2002–17).

guarantee to floor brokers representing crossing and facilitation orders in index options. Floor brokers would be guaranteed a participation right of 20% for crossing and facilitation orders they represent in index options. All other current rules concerning participation guarantees in crossing and facilitation orders would apply to index options under the proposal.[7] The Exchange believes that the proposed expansion of the participation guarantee to crossing and facilitation orders in index options would make the Exchange more competitive by providing an incentive to index options order flow providers to bring order flow to the Exchange.[8] The Exchange also believes that the proposed rule change should make order flow providers, as customers of Exchange floor brokers, aware of the percentage of crossing and facilitation orders in index options to which they are entitled and also provide the Exchange's trading crowd participants with the same guidelines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the investors and the public interest by providing floor brokers and Exchange crowd participants with rules setting forth guidelines regarding the percentage of crossing and facilitation orders in index options to which the floor brokers are entitled, and by making the Exchange more competitive by providing an incentive to index options order flow providers to bring order flow to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2003–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should be submitted by March 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3433 Filed 2–17–04; 8:45 am]

BILLING CODE 8010–01–P

[7] *Id. See also* Phlx Rule 1064, Commentary .02.

[8] The Exchange indicated this belief in the section of its filing that discusses the statutory basis for the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice Inviting Application for Funding Under the 7(j) Management and Technical Assistance Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of invitation for proposals for 7(j) management and technical assistance awards in FY 2004.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. MTA–04–01, to solicit proposals from organizations to provide business development assistance for nationwide 7(j) eligible client executives. The authorizing legislation for this training is Section 7(j) of the Small Business Act, U.S.C. 636(j). SBA will select successful proposals using a competitive process.

Award recipients will have responsibility for project oversight, design, marketing, management, execution, monitoring and reporting for the training program. Proposals are being solicited from non-profit organizations, small businesses and educational institutions. The applicant must have the qualified trainers, support staff, training and technical materials, equipment and facilities, or access to facilities, as well as an internal financial management system, to provide business development assistance to 7(j) eligible client executives.

The business development proposal must provide practical information and guidance on how to define business development and carry out that business development. The proposal must include plans to assist the firms in the development of Individualized Business Development Plans (IBDPs). The proposal must also include the development of DVD/materials package (full audio and video) for the 7(j) clients. The business development training workshops, IBDPs and DVDs will be provided to firms with less than two years in the 8(a) program and other 7(j) eligible clients who have been in business for not more than four (4) years. The class room lecture and workshops will provide brief training

and development of the (IBDP) that address: competence in accounting; competence in marketing; competence in cash flow management; access to credit; access to capital; access to surety; access to Federal procurement, non-Federal procurement and subcontracts; access to further training, which may include marketing, human resources, accounting, management, technical/professional skills.

SBA plans to award approximately $1,000,000.00, subject to the availability of funds, under this notice. This amount would fund one or multi-awards which would provide business development training workshops and DVDs to approximately 1,500 firms including 8(a) participants entering the program and other eligible 7(j) executives. SBA reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice. Awards will have a project period of one (1) year. Award amounts may vary, depending on the number of 7(j) eligible clients that an applicant is able to train.

The selection criteria to be used for this competition will be provided in the application package.

DATES: The closing date for applications will be March 24, 2004.

ADDRESSES: To obtain a copy of the complete application package call Adrienne Dinkins at (202) 205–7140, or go to SBA's Web site at *http://www.sba.gov.*

FOR APPLICATIONS AND FURTHER INFORMATION: Questions concerning the technical aspects of this notice should be directed to Jacqueline Fleming at (202) 205–6177. Questions about budget or funding matters should be directed to Adrienne Dinkins at (202) 205–7140.

Program Authority: 15 U.S.C. 636(j)

Eugene Cornelius, Jr.,

Associate Administrator, Business Development.

[FR Doc. 04–3471 Filed 2–17–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) will be hosting a meeting of the Executive Committee of the National Advisory Council (NAC). The meeting will be held on Monday, February 23, 2004 at the Sheraton Old Town Hotel located 800 Rio Grande Boulevard NW., Albuquerque, NM 87104.

Anyone wishing to attend and make an oral presentation to the Board must contact Kimberly Mace, no later than Tuesday, February 17, 2004 via e-mail or fax. Kimberly Mace, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416 (202) 205–8414 phone or (202) 205–6113 fax or e-mail *kimberly.mace@sba.gov.*

Matthew Becker,

Committee Management Officer.

[FR Doc. 04–3472 Filed 2–17–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The SBA Advisory Committee on Veterans Business Affairs

The U.S. Small Business Administration (SBA), pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), will be hosting its first Advisory Committee meeting on Veterans Business Affairs for Fiscal Year 2004. The meeting will be held on March 1–2, 2004 from 9 am-5 pm and on March 3, 2004 from 9 a.m.-12 p.m. in the Eisenhower Conference Room. The conference room is located on the 2nd Floor-Side B, at SBA Headquarters, 409 3rd Street SW., Washington, DC, 20416. If you have any questions regarding this meeting, please contact Cheryl Clark in the Office of Veterans Business development at (202) 205–6773.

Matthew Becker,

Committee Management Officer.

[FR Doc. 04–3473 Filed 2–17–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 91)]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation [General Oversight]

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 12 in STB Finance Docket No. 33388 (Sub-No. 91); Notice of Public Hearings in Trenton, NJ, and Washington, DC.

SUMMARY: The Surface Transportation Board (Board) will hold two public hearings in this proceeding: the first on Friday, April 2, 2004, in Trenton, NJ; and the second on Monday, May 3, 2004, in Washington, DC. The hearings will provide a forum for interested persons to express their views on the matters at issue in this proceeding. Persons wishing to speak at either or both of the hearings should notify the Board in writing.

DATES: The public hearings will take place on Friday, April 2, 2004 (in Trenton, NJ), and on Monday, May 3, 2004 (in Washington, DC). Persons wishing to speak at the first hearing (to be held April 2nd, in Trenton, NJ) should file with the Board a written notice of intent to speak (and should indicate a requested time allotment) as soon as possible but no later than March 18, 2004. Persons wishing to speak at the second hearing (to be held May 3rd, in Washington, DC) should file with the Board a written notice of intent to speak (and should indicate a requested time allotment) as soon as possible but no later than April 16, 2004. Any person wishing to speak at both hearings may file a single written notice of intent to speak (provided that such notice is filed by the March 18th deadline for the first hearing) or, if such person prefers, such person may file two separate written notices of intent to speak (provided that each such notice is filed by the appropriate deadline, *i.e.,* March 18th for the first hearing and April 16th for the second hearing). Written statements by persons speaking at either or both of the hearings may be submitted prior to the appropriate hearing but are not required. Persons wishing to submit written statements in advance of the first hearing should do so by March 26, 2004. Persons wishing to submit written statements in advance of the second hearing should do so by April 26, 2004.

ADDRESSES: An original and 10 copies of all notices of intent to speak and any written statements should refer to STB Finance Docket No. 33388 (Sub-No. 91) and should be sent to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565–1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: In *CSX Corp. et al.—Control—Conrail Inc. et al.,* 3 S.T.B. 196 (1998) (*Merger Dec. No. 89*), the Board approved, subject to various conditions (including a 5-year general oversight condition): (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation

(collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of the assets of Conrail by and between CSX and NS. Pursuant to *Merger Dec. No. 89,* acquisition of control of Conrail was effected by CSX and NS on August 22, 1998 (the Control Date), and the division of the assets of Conrail by and between CSX and NS was effected on June 1, 1999 (the Split Date). The transaction that the Board approved in *Merger Dec. No. 89* is referred to as the Conrail Transaction.

In *Merger Dec. No. 89,* the Board established general oversight for 5 years so that the Board might assess the progress of implementation of the Conrail Transaction and the workings of the various conditions the Board had imposed, and the Board retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, the Board determined that it was necessary to impose additional conditions and/or to take other action to address harms caused by the Conrail transaction. *See Merger Dec. No. 89,* 3 S.T.B. at 217 (item 38), 365–66, 385 (ordering paragraph 1).

In a recently served decision, *see CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation* [*General Oversight*], STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 11 (STB served January 21, 2004) (*Oversight Dec. No. 11*), the Board: discussed the issues that had been raised in the fourth annual round of the ''general oversight'' proceeding; set the schedule for the filing of pleadings in the fifth and final annual round of the ''general oversight'' proceeding (comments are due on July 1, 2004, and replies are due on August 2, 2004); and announced that, to allow interested parties an opportunity to express their views for the Board's consideration, at least one public hearing would be held prior to June 1, 2004 (the fifth anniversary of the Split Date).

Because the Board is interested in hearing what members of the public have to say about any matter connected with the Conrail Transaction, the Board has now decided to hold, prior to June 1, 2004, two public hearings at which interested parties will have an opportunity to express, in a public forum, their views respecting such matters. The Board anticipates that interested parties will, if they think it appropriate, follow up on their spoken statements at the public hearings by filing, on or before July 1st, written comments in the fifth annual round of the ''general oversight'' proceeding. Interested parties should understand that, although the Board has referred to the fifth annual round as the final annual round, and although the due date for written comments to be filed in the fifth annual round comes after the fifth anniversary of the Split Date, the formal oversight process of the Conrail Transaction that the Board established when it approved that transaction will not be concluded on June 1, 2004 (the fifth anniversary of the Split Date), but, rather, will be concluded only at such time as the Board issues a decision concluding that formal oversight process. *See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company [General Oversight],* STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 21 (STB served December 20, 2001), slip op. at 1 (''[W]e are now concluding, as scheduled, our formal oversight process for the UP/SP merger.''), slip op. at 12, ordering paragraph 1 (''The formal oversight process of the UP/SP merger that we established when we approved that merger is concluded.'').

Date/Time/Place of First Hearing; Subject Matter; Expected Appearances. The first hearing will be held on Friday, April 2, 2004, in Trenton, NJ. The time and the precise location at which the first hearing will be held will be announced in the near future, as soon as final arrangements have been made.

The first hearing will deal with the three ''shared assets areas'' (SAAs) that were created in connection with the Conrail Transaction. *See* 3 S.T.B. at 228 (describing the North Jersey SAA, the South Jersey/Philadelphia SAA, and the Detroit SAA). The Board expects that the first hearing will start with testimony by employees of CSX and NS (and also, if CSX and NS so desire, an employee of Conrail) respecting both the present status of operations within the SAAs and also any plans for any future fundamental changes in such operations. Following such testimony, interested parties will have an opportunity to express any concerns they may have respecting any or all of the three SAAs.

Date/Time/Place of Second Hearing; Subject Matter; Expected Appearances. The second hearing will be held on Monday, May 3, 2004, beginning at 10 a.m., in Room 760, the Board's hearing room, on the 7th Floor at the Board's headquarters in the Mercury Building, 1925 K Street, NW. (on the northeast corner of the intersection of 20th St., NW., and K Street, NW.), Washington, DC.

The second hearing will deal with all aspects of the Conrail Transaction other than the SAAs. The Board expects that the second hearing will start with testimony by the CEOs of CSX and NS respecting the non-SAA aspects of the Conrail Transaction. Following such testimony, interested parties will have an opportunity to express any concerns they may have respecting any non-SAA aspect of the Conrail Transaction.

Notice of Intent To Speak; Written Statements; Paper Copies. Persons wishing to speak at the first hearing (to be held April 2nd, in Trenton, NJ) should file with the Board a written notice of intent to speak, and should indicate a requested time allotment, as soon as possible but no later than March 18, 2004. Persons wishing to speak at the second hearing (to be held May 3rd, in Washington, DC) should file with the Board a written notice of intent to speak, and should indicate a requested time allotment, as soon as possible but no later than April 16, 2004. Any person wishing to speak at both hearings may file a single written notice of intent to speak (provided that such notice is filed by the March 18th deadline for the first hearing) or, if such person prefers, such person may file two separate written notices of intent to speak (provided that each such notice is filed by the appropriate deadline, *i.e.,* March 18th for the first hearing and April 16th for the second hearing). Written statements by persons speaking at either or both of the hearings may be submitted prior to the appropriate hearing but are not required. Persons wishing to submit written statements in advance of the first hearing should do so by March 26, 2004. Persons wishing to submit written statements in advance of the second hearing should do so by April 26, 2004.

Paper Copies. Persons intending to speak at either or both of the hearings and/or to submit written statements prior to either or both of the hearings should submit an original and 10 paper copies, respectively, of their notices and/or written statements.

Board Releases Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at ''*http://www.stb.dot.gov.*''

This action will not significantly affect either the quality of the human

environment or the conservation of energy resources.

Dated: February 12, 2004.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 04–3436 Filed 2–17–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–156 (Sub-No. 24X)]

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company—Abandonment Exemption—in Albany County, NY

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company (D&H), has filed a notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon a 1.3 ±mile line of railroad known as the Troy Branch extending from milepost T1.81 ± at Green Island to milepost T3.11 ± at Cohoes, in Albany County, NY. The line traverses United States Postal Service Zip Codes 12047 and 12183.

D&H has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can be and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 19, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 27, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 9, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Diane P. Gerth, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

D&H has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 23, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), D&H shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by D&H's filing of a notice of consummation by February 18, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 9, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–3357 Filed 2–17–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 10, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 19, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0117.

Form Number: IRS Form 1099–OID.

Type of Review: Extension.

Title: Original Issue Discount.

Description: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 9,185.

Estimated Burden Hours Respondent/Recordkeeper: 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,142,324 hours.

OMB Number: 1545–1379.

Form Number: IRS Form 8831.

Type of Review: Extension.

Title: Excise Taxes on Excess Inclusion of REMIC Residual Interests.

Description: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the

information to determine the correct tax liability of the REMIC.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 31.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—4 hr., 32 min.
Learning about the law or the form—1 hr., 29 min.
Preparing and sending the form to the IRS—1 hr., 37 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 237 hours.

OMB Number: 1545–1459.

Form Number: IRS Form 8498.

Type of Review: Extension.

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

Description: This information relates to the approval of continuing professional education programs for the individuals enrolled to practice before the Internal Revenue Service (enrolled agents).

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Respondent: 36 minutes.

Frequency of Response: Other (one-time filing).

Estimated Total Reporting Burden: 300 hours.

OMB Number: 1545–1738.

Revenue Procedure Number: Revenue Procedure 2001–29.

Type of Review: Extension.

Title: Leveraged Leases.

Description: Revenue Procedure 2001–29 sets forth the information and representations required to be furnished by taxpayers in requests for an advance ruling that a leveraged lease transaction is, in fact, a valid lease for Federal income tax purposes.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Burden Hours Respondent: 80 hours.

Frequency of Response: 80 hours.

Estimated Total Reporting Burden: 800 hours.

OMB Number: 1545–1863.

Form Number: IRS Form 8879–S.

Type of Review: Extension.

Title: IRS *e-file* Signature Authorization for Form 1120S.

Description: Form 8879–S authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, electronic funds withdrawal consent.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 11,360.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—4 hr., 18 min.
Learning about the law or the form—28 min.
Preparing the form—1 hr., 29 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 74,181 hours.

OMB Number: 1545–1864.

Form Number: IRS Form 8879–C.

Type of Review: Extension.

Title: IRS *e-file* Signature Authorization for Form 1120.

Description: Form 8879–C authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, electronic funds withdrawal consent.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 7,760.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—4 hr., 18 min.
Learning about the law or the form—28 min.
Preparing and sending the form to the IRS—1 hr., 29 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 50,673 hours.

OMB Number: 1545–1866.

Form Number: IRS form 8453–C.

Type of Review: Extension.

Title: U.S. Corporation Income Tax Declaration for an IRS *e-file* Return.

Description: Form 8453–C is used to enable the electronic filing of Form 1120.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—4 hrs., 46 min.
Learning about the law or the form—28 min.
Preparing the form—1 hr., 30 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 14,040 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–3422 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Commerce in Firearms and Ammunition—Annual Inventory of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 198, page 59196 on October 14, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 19, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Commerce in Firearms and Ammunition—Annual Inventory of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: none. Abstract: The regulations require Federal Firearms Licensees to conduct an annual inventory of their firearms and clarify who is responsible for reporting firearms that are lost or stolen in transit. The collection of information is contained in 27 CFR 178.39a and 178.130.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100,293 respondents, who will keep firearms records that will take approximately 1 minute to record.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 15,483 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 30, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 04–3447 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 203, page 60116, October 21, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 19, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: none. Abstract: The information contained in the statement of process is required to ensure compliance with the provisions of Pub. L. 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 8 respondents, who will complete the required information within approximately 18 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There is an estimated 16 total burden hours associated with this collection.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 30, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 04–3448 Filed 2–17–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Next Generation of Currency; Availability of an Environmental Assessment and Finding of No Significant Impact

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of the Treasury is issuing this notice to inform the public of the availability of the Environmental Assessment for the Production of the Next Generation of Currency, Western Currency Facility, Fort Worth, Texas and Washington, DC Facility, and a draft Finding Of No Significant Impact (FONSI). The Environmental Assessment (EA) has been prepared to address the environmental impacts of the Next Generation of Currency. This EA was prepared under the statutory authority of 40 CFR 1500 *et seq.*, the Council of Environmental Quality's National Environmental Policy Act implementing regulations.

DATES: Comments must be postmarked no later than March 19, 2004. Comments should be sent to the address given under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: Direct all written comments to Department of the Treasury, Bureau of Engraving and Printing, Neal Mohlmann, 14th & C Streets, SW., DC 20228, (202) 874–2048.

FOR FURTHER INFORMATION CONTACT: For a copy of the EA or for further information, contact Mr. Neal Mohlmann, Chief, Office of Environment and Safety, telephone (202) 874–2048; fax (202) 874–9757. The EA is also available on the Bureau of Engraving and Printing's Web site at *http://www.moneyfactory.com/uploads/BEP-Environmental-Assessment.pdf*.

SUPPLEMENTARY INFORMATION: The Bureau of Engraving and Printing has prepared an Environmental Assessment (EA) concerning the introduction of an offset printing process and temporary production increases to phase-in the Next Generation of Currency. On the basis of the EA, the Bureau has concluded that no significant adverse impacts are expected to occur from implementation of the proposed action in either the short-term, long-term, or cumulatively. Because the proposed action would not result in significant adverse environmental impacts, the Bureau concluded that the preparation of a finding of no significant impact (FONSI) was appropriate, and therefore, an environmental impact statement is not required. The basis for this conclusion is supported by the following findings. Both temporary and permanent increases in certain solid and hazardous waste streams due to increased production rates can be managed within existing Bureau facility capacities and capabilities. Long-term increases in air emission would occur at the Western Currency Facility; however, these emissions would be within permitted limits and would not result in the violation of any air standards or substantially degrade regional air quality. The net volatile organic compounds-related air emissions associated with the DC Facility, in consideration of the recent replacement of several I–8 presses, would actually decrease.

Title: Environmental Assessment and Draft Finding of No Significant Impact Next Generation of Currency.

Dated: February 12, 2004.

Neal Mohlmann,

Chief, Office of Environment and Safety.

[FR Doc. 04–3437 Filed 2–17–04; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–105885–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–105885–99 (TD 9075), Compensation Deferred Under Eligible Deferred Compensation Plans (§ 1.457–8).

DATES: Written comments should be received on or before April 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Compensation Deferred Under Eligible Deferred Compensation Plans.

OMB Number: 1545–1580.

Notice Number: REG–105885–99.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. REG–105885–99 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour, 2 minutes.

Estimated Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3464 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4506–T, Request for Transcript of Tax Return.

DATES: Written comments should be received on or before April 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Transcript of Tax Return.

OMB Number: 1545–1873.

Form Number: Form 4506–T.

Abstract: 26 U.S.C. 7513 allows for taxpayers to request a copy of a tax return or return information. Form 4506–T is used by a taxpayer to request a copy of a Federal Tax information, other than a return. The information provided will be used to search the taxpayers account and provide the requested information; and to ensure that the requester is the taxpayer or someone authorized by the taxpayer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 720,000.

Estimated Average Time Per Respondent: 46 minutes.

Estimated Total Annual Burden Hours: 555,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3465 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–24, Advanced Insurance Commissions.

DATES: Written comments should be received on or before April 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Advanced Insurance Commissions.

OMB Number: 1545–1736.

Revenue Procedure Number: Revenue Procedure 2001–24.

Abstract: A taxpayer that wants to obtain automatic consent to change its method of accounting for cash advances on commissions paid to its agents must agree to the specified terms and conditions under the revenue procedure. This agreement is ratified by attaching the required statement to the federal income tax return for the year of change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,270.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,318.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3466 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–200–76]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–200–76 (TD 8069), Qualified Conservation Contributions (§ 1.170A–14).

DATES: Written comments should be received on or before April 19, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Conservation Contributions.

OMB Number: 1545–0763.

Regulation Project Number: LR–200–76.

Abstract: Internal Revenue Code section 170(h) describes situations in which a taxpayer is entitled to a deduction for a charitable contribution for conservation purposes of a partial interest in real property. This regulation requires a taxpayer claiming a deduction to maintain records of (1) the fair market value of the underlying property before and after the donation and (2) the conservation purpose of the donation.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour, 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 9, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3467 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8873

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8873, Extraterritorial Income Exclusion.

DATES: Written comments should be received on or before April 19, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Extraterritorial Income Exclusion.

OMB Number: 1545–1722.

Form Number: 8873.

Abstract: The FSC and Extraterritorial Income Exclusion Act of 2000 added section 114 to the Internal Revenue Code. Section 114 provides for an exclusion from gross income for certain transactions occurring after September 30, 2000, with respect to foreign trading gross receipts. Form 8873 is used to compute the amount of extraterritorial income excluded from gross income for the tax year.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 25 hours, 27 minutes.

Estimated Total Annual Burden Hours: 25,450,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3468 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8875

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8875, Taxable REIT Subsidiary Election.

DATES: Written comments should be received on or before April 19, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxable REIT Subsidiary Election.

OMB Number: 1545–1721.

Form Number: 8875.

Abstract: A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in section 856(l).

Current Actions: There are no changes being made to the form at this time.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 7 hr., 40 min.

Estimated Total Annual Burden Hours: 7,660.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3469 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120-ND

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons.

DATES: Written comments should be received on or before April 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

OMB Number: 1545–0954.

Form Number: 1120–ND.

Abstract: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash to decommission the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if an entity related to the fund or the nuclear utility must pay taxes on self-dealing, as required by Internal Revenue Code section 4951.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 32 hours, 35 minutes.

Estimated Total Annual Burden Hours: 3259.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–3470 Filed 2–17–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
February 18, 2004

Part II

The President

Notice of February 13, 2004—Notice of Intention To Enter Into a Free Trade Agreement With Australia

Federal Register
Vol. 69, No. 32
Wednesday, February 18, 2004

Presidential Documents

Title 3—

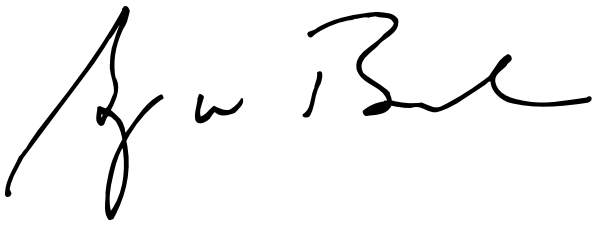
The President

Notice of February 13, 2004

Notice of Intention To Enter Into a Free Trade Agreement With Australia

Consistent with section 2105(a)(1)(A) of the Trade Act of 2002, I have notified the Congress of my intention to enter into a free trade agreement with the Government of Australia.

Consistent with section 2105(a)(1)(A) of that Act, this notice shall be published in the **Federal Register**.



THE WHITE HOUSE,
February 13, 2004.

[FR Doc. 04–3712
Filed 2–17–04; 11:55 am]
Billing code 3190–01–M

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Federal Register

Vol. 69, No. 32

Wednesday, February 18, 2004

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

660.....7188

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 18, 2004

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Aminoethoxyvinylglycine hydrochloride; published 2-18-04

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Louisiana; published 2-3-04

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Airbus; published 2-3-04

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Electronic payee statements; published 2-18-04

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Agricultural Marketing Service

Country of origin labeling:

Beef, lamb, pork, fish, perishable agricultural commodities, and peanuts; mandatory labeling; comments due by 2-27-04; published 12-22-03 [FR 03-31492]

Spearmint oil produced in Far West; comments due by 2-23-04; published 1-23-04 [FR 04-01404]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Chronic Wasting Disease Heard Certification Program:

Captive deer and elk; interstate movement requirements; comments due by 2-23-04; published 12-24-03 [FR 03-31543]

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National Oceanic and Atmospheric Administration

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South Atlantic Fishery Management Council; meetings; comments due by 2-27-04; published 1-5-04 [FR 04-00090]

Northeastern United States fisheries—

Multispecies fishery; comments due by 2-27-04; published 12-29-03 [FR 03-31895]

Northeast multispecies; comments due by 2-27-04; published 1-29-04 [FR 04-01541]

West Coast States and Western Pacific fisheries—

Western Pacific pelagic; sea turtle take mitigation measures; comments due by 2-27-04; published 1-28-04 [FR 04-01811]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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Labor standards; contracts involving construction; comments due by 2-23-04; published 12-23-03 [FR 03-31232]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

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Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

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Nonwastewaters from production of dyes, pigments, and food, drug, and cosmetic colorants; mass loadings-based listing; comments due by 2-23-04; published 11-25-03 [FR 03-28783]

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Recyclable hazardous secondary materials identified as not discarded; definition revisions; comments due by 2-25-04; published 12-29-03 [FR 03-31868]

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National priorities list update; comments due by 2-27-04; published 1-28-04 [FR 04-01821]

National priorities list update; comments due by 2-27-04; published 1-28-04 [FR 04-01822]

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Rural health care support mechanism; comments due by 2-23-04; published 12-24-03 [FR 03-31684]

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Satellite earth station use on board vessels in 5925-6425 MHz/3700-4200 MHz bands and 14.0-14-5 GHz/11.7-12.2 GHz bands; comments due by 2-23-04; published 1-22-04 [FR 04-01245]

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Labor standards; contracts involving construction; comments due by 2-23-04; published 12-23-03 [FR 03-31232]

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Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Reports and guidance documents; availability, etc.:

Port access routes study; approaches to Narragansett and Buzzards Bays, etc., CT, RI and MA; comments due by 2-23-04; published 12-23-03 [FR 03-31623]

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Public Housing Operating Fund Program; Negotiated Rulemaking Committee; meeting; comments due by 2-27-04; published 1-28-04 [FR 04-01747]

LIST OF PUBLIC LAWS

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H.R. 2264/P.L. 108–200

Congo Basin Forest Partnership Act of 2004 (Feb. 13, 2004; 118 Stat. 458)

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